

D-95

19 Jan 09

Defense Motion to Compel Discovery

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UNITED STATES OF AMERICA,)
)
vs.)
)
KHALID SHEIKH MOHAMMED, *et. al*)
)
(Khalid Sheikh Mohammed))
_____)

D-95
Defense Motion
To Compel Discovery

January 19, 2009

CLASSIFIED¹

1. **Timeliness:** This motion is timely filed.

2. **Relief Sought:** With the advice and consent of Mr. Khalid Sheikh Mohammed, the undersigned defense counsel on his behalf seek to compel production of various categories of discovery in the possession of the government that have previously been requested by Mr. Mohammed but not produced by the government.

3. **Overview:**

On 2 July 2008, Mr. Mohammed requested production of various categories of discovery described in a memorandum submitted to the prosecution on that date (*see* Attachment A). The prosecution responded to this request on 18 September 2008 indicating its willingness to produce certain discovery and refusal to produce other discovery (*see* Attachment B).

To date, the government has produced very little by way of discovery in this complex case involving what the government has described as the largest criminal investigation in the history of the United States. At a hearing before the Military Commission on 24 September 2008, the government indicated its intention to produce significant additional discovery prior to the next scheduled hearing on 8 December 2008. Notwithstanding this representation, no further discovery was produced to Mr. Mohammed before or after that date.

Mr. Mohammed now moves to compel the production of various discovery in the possession of the government that are material to the preparation of his defense, either at the trial or sentencing phases of this capital case.

¹ This pleading and its attachments are being filed as Classified, TS/SCI, based upon the existence of Protective Order No. 7 and the advice of the Commission Senior Security Advisor ("SSA"). However, it should be noted that except for the classified declaration of counsel (Attachment C), the attachments hereto and the matters stated herein are derived from open source materials, public statements by government officials, documents that the government has released to the public, and private investigation.

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4. **Burdens of Proof and Persuasion:** As the moving party, the defense bears the burden of proof on any question of fact; this burden is met by a showing of a preponderance of evidence. See R.M.C. 905(c).

5. **Facts:**

1. Proceedings in *United States v. Mohammed*

a. On 11 February 2008, charges were sworn against Mr. Mohammed and the co-accused. On 15 April 2008, charges were re-sworn. On 9 May 2008, ten charges were referred capital to this Military Commission against Mr. Mohammed. The charging document in this case contains allegations of international terrorism and an alleged criminal conspiracy involving the events of September 11, 2001, al Qaeda, various charged and uncharged co-conspirators and acts taking place over a number of years.² AE001.

b. On 5 June 2008, this Commission arraigned Mr. Mohammed and the four other co-accused in this case.

c. At the initial arraignment and in Commission proceedings that have followed, Mr. Mohammed and other co-accused have stated in open court that they had been tortured while in the custody of the United States.

d. On 2 July 2008, Mr. Mohammed requested production of various categories of discovery described in a memorandum submitted to the prosecution on that date (*see* Attachment A). The prosecution responded to this request on 18 September 2008 indicating its willingness to produce certain discovery and refusal to produce other discovery (*see* Attachment B).

e. In its submission to the Commission, the government has described the depth and extent of the investigation underlying this case. Specifically, the government has indicated that following the events of September 11, 2001, “[t]he FBI, in conjunction with civil and state authorities, other federal agencies, and foreign governmental agencies, immediately initiated the largest criminal investigation in the history of the United States. During the course of that investigation, the investigative team collected evidence from private, commercial and governmental individuals and agencies around the world.” AE025, Government’s Motion for Protective Order #2, p. 3, para J.

f. Notwithstanding the foregoing, the government has produced relatively little

² E.g., Charge I alleges Conspiracy in violation of 10 U.S.C. §950v(b)(28), charging that the Accused, “from in or about 1996 to in or about May 2003,” conspired with various named persons, “and various other members and associates of the al Qaeda organization ...” Sworn Charges (15 Apr 08) at p. 1.

discovery to date. In June 2008, the government produced the referral binder provided to the Convening Authority in this case which consisted of approximately 7200 pages of documents approximately 5000 pages of which were comprised of multiple page death certificates.³ In August, the government produced 13 cd's, 12 of which contained videos and audios and the other contained approximately 25,000 images. Shortly after this production, the government produced 1 additional cd containing the Tate Investigation Report.

g. At a hearing before the Military Commission on 24 September 2008, the government indicated its intention to produce significant additional discovery prior to the next scheduled hearing on 8 December 2008. Notwithstanding this representation, no further discovery was produced to Mr. Mohammed before or after that date.

h. By way of comparison, the defense has inquired into the discovery associated with the federal criminal case involving Zacarias Moussaoui who was similarly charged with a criminal conspiracy involving the events of September 11, 2001 and al Qaeda in *United States v. Zacarias Moussaoui*, Criminal No. 01-455-A (U.S. District Court for the Eastern District of Virginia). Discovery produced to the defense in that case is reported to consist of approximately 1300 cd's of non-classified discovery, 1.2 million pages of website material deemed pertinent, 180,000 FBI Reports (302's), 1262 audio tapes, 526 video tapes, 200 computer hard drives and numerous other classified evidence. Declaration of Scott McKay, para. 21, D022, (hereinafter "McKay Declaration").

II. CSRT Proceedings

a. On 10 March 2007, a Combatant Status Review Tribunal ("CSRT") hearing for Mr. Mohammed was conducted at the United States Naval Station, Guantanamo Bay, Cuba ("GTMO"). Mr. Mohammed was not provided legal counsel in connection with these proceedings. According to the unclassified transcript of this hearing, Mr. Mohammed attended this proceeding and purported to describe through a "personal representative" with the U.S. Military his association with al Qaeda, that he was the "Military Operational Commander" for all foreign operations around the world under the direction of Osama bin Laden and Ayman Al-Zawahiri, that he was involved in the production of biological weapons such as anthrax and a "dirty bomb" operation in the United States, and that he was involved in the following:

³ The government later produced the same documents, without redactions, as classified discovery.

1. 1993 World Trade Center Operation,
2. 9/11 Operation;
3. kidnapping and killing of Daniel Pearl in Pakistan;
4. "Shoe Bomber Operation to down two American airplanes";
5. "Filka Island Operation in Kuwait";
6. bombing of a nightclub in Bali, Indonesia;
7. the "New (or Second) Wave attacks against the following skyscrapers after 9/11":
 - a. Library Tower, California.
 - b. Sears Tower, Chicago.
 - c. Plaza Bank, Washington state.
 - d. The Empire State Building, New York City.
8. destruction of American military vessels and oil tankers in the Strait of Hormuz, the Strait of Gibraltar, and the Port of Singapore";
9. attempt to bomb and destroy the Panama Canal;
10. assassination attempts on several former American Presidents, including President Carter;
11. attempt to bomb suspension bridges in New York;
12. attempt to destroy the Sears Tower by burning a few fuel or oil tanker trucks beneath it or around it;
13. attempt to destroy Heathrow Airport, the Canary Wharf Building, and Big Ben on British soil;
14. operation to destroy night clubs frequented by American and British citizens in Thailand;
15. attempt to destroy the New York Stock Exchange and other financial targets after 9/11;
16. operation to destroy buildings in the Israeli city of Elat by using airplanes leaving from Saudi Arabia;
17. operation to destroy American embassies in Indonesia, Australia, and Japan;
18. operation to destroy the Israeli embassies in India, Azerbaijan, the Philippines, and Australia;
19. attempt to destroy Israeli 'El-Al' Airlines flight on Thailand soil departing from Bangkok Airport;
20. sending several "Mujahadeen" into Israel to conduct surveillance to hit several strategic targets deep in Israel;
21. bombing of the hotel Mombasa that is frequented by Jewish travelers via El-Al airlines;
22. launching a Russian made SA-7 surface-to-air missile on El-Al or other Jewish airliner departing from Mombasa;
23. operation to hit American targets in South Korea, such as American military bases and a few night clubs frequented by American soldiers;

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24. providing financial support to hit American Jewish and British targets in Turkey;
25. attempt to hit nuclear power plants that generate electricity in several U.S. states;
26. attempt to hit NATO Headquarters in Europe;
27. the Bojinka Operation, which was designed to down multiple American airplanes;
28. assassination attempt against President Clinton during his visit to the Philippines in 1994 or 1995;
29. assassination attempt against Pope John Paul II while he was visiting the Philippines;
30. assassination attempt of Pakistan's President Musharaf; and
31. attempt to destroy an American oil company purportedly owned by former Secretary of State, Henry Kissinger, on the Island of Sumatra, Indonesia.

(Unclassified Transcript of CSRT proceedings, pp. 17-18 (Attachment D).)

b. The Summary of Evidence prepared in connection with this CSRT hearing (Attachment E) together with foregoing transcript (pp. 5-7) references various items of evidence relied upon by the Tribunal including a computer hard drive that was allegedly seized during the capture of Mr. Mohammed, another unidentified computer hard drive allegedly seized in connection with a threat to United States' airlines, embassies and the Pope, a computer hard drive allegedly belonging to Ramzi Yousef and other evidence allegedly seized during the capture of Mr. Mohammed.

c. Aside from the limited discovery concerning the events of September 11, 2001, discovery requested by Mr. Mohammed on July 2, 2008 (Attachment A) has not been produced by the government nor has the government produced the referenced computer hard drives or other evidence allegedly seized during the arrest of Mr. Mohammed.

III. Further Discovery Not Produced by the Government

As noted above, Mr. Mohammed, through counsel, made a request for over 55 categories of discovery on July 2, 2008. (Attachment A.) The government responded to this request on September 18, 2008, denying in large part the requests, stating it "understands its obligations" concerning other requests and narrowly limiting its response to others by stating it will produce relevant discovery that the government intends to offer as evidence at trial. (Attachment B). To date, as the government represents in its September 2008 response, it has provided only approximately 40,000 pages of material (approximately 7200 pages of which were the duplicate, unredacted materials comprising the referral binder). No additional discovery has been received.

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IV. Public Source and Unclassified Reporting on the Apprehension and Treatment of Mr. Mohammed and Other So Called High Value Detainees

a. Various public sources indicate that Mr. Mohammed was captured in Rawalpindi, Pakistan on March 1, 2003 and held in the custody of the Central Intelligence Agency at various undisclosed locations until his transfer to the custody of the United States Military at GTMO in September 2006. Recent public sources including former CIA Director George Tenet indicate that immediately after his capture, Mr. Mohammed advised his CIA captors "that he would talk only when he got to New York and was assigned a lawyer...." (See Inside the Interrogation of a 9/11 Mastermind, by Scott Shane, New York Times, June 22, 2008, submitted as Exhibit to Joint Defense Motion to Modify Protective Order #3 (D-013); see, also CBS News, 60 Minutes: George Tenet: At the Center of the Storm, April 29, 2007, www.cbsnews.com/stories/2007/04/25/60minutes/main2728375.shtml. McKay Declaration, para. 13, D022.

b. Mr. Mohammed was first assigned a lawyer (CAPT Prescott L. Prince, USNR) in the Spring of 2008, over 5 years after he requested and was denied counsel. (See AE009; McKay Declaration.)

c. Various public sources, including acknowledgments by officials of the United States Government, such as that made by CIA director Michael Hayden, to the United States Congress, as well as news sources, indicate that certain detainees in CIA custody were subjected to so-called "enhanced interrogation techniques" by agents of the U.S. government. These "techniques" are reported to have included [REDACTED]

[REDACTED] On February 5, 2008, Mr. Hayden testified before the Senate Select Committee on Intelligence and acknowledged the use of "waterboarding" on Mr. Mohammed. [REDACTED]

[REDACTED] According to these experts, the above described practices, individually or collectively, amount to cruel, abusive and degrading treatment at a minimum and equate to torture under most internationally recognized norms. (McKay Declaration, paras 15-16.)

d. It also has been publicly reported that other coercive techniques were used against Mr. Mohammed that involved the apprehension and mistreatment of his young children. According to public reports, including the unclassified Transcript of the CSRT hearing for Majid Khan on March 28, 2007, Ali Khan, described as a citizen of Pakistan and a permanent resident of the United States, provided a statement based on information provided to him by one

of his sons indicating that he and another of Mr. Khan's sons were detained in the same place where two of Khalid Sheik Mohammed's young children, ages about 6 and 8, were held. According to Mr. Khan: "The Pakistani guards told my son that the boys were kept in a separate area upstairs, and were denied food and water by other guards. They were also mentally tortured by having ants or other creatures put on their legs to scare them and get them to say where their father was hiding." (See www.globalsecurity.org/security/library/report/2007/khan_csrt-hearing070415.htm). The unclassified transcript from the CSRT hearing for Mr. Mohammed on March 10, 2007 also references Mr. Mohammed's description of the treatment of his children: "They arrested my kids intentionally. They are kids. They been arrested for four months they had been abused." (Unclassified Transcript, page 24 of 26, www.defenselink.mil/news/transcript_ISN10024.pdf.) (McKay Declaration, para. 18.)

e. Katherine Stone Newell is a former officer with the United States Air Force and an attorney employed in the Office of the Chief Defense Counsel, Office of Military Commissions since November, 2007. In this capacity, she serves as a subject matter resource on the subject of torture and other forms of cruel, inhuman, and degrading treatment. From October 2005 to March 2007, she was the Counterterrorism Counsel for the U.S. Program of Human Rights Watch. In both capacities, she reviewed numerous open source documents relating to U.S. detention and interrogation operations. (Declaration of Katherine Stone Newell, paras. 1-2, D022, Attachment I (hereinafter "Newell Declaration.") The Newell Declaration was filed earlier in the present litigation and is not based on classified information or any information obtained directly from an accused, including Mr. Mohammad,⁴ or from counsel for any accused. (Para. 3.)

According to the unclassified Newell Declaration (submitted as Attachment F hereto), which is based solely on open source documents, the excerpts below⁵ apply to detainees charged in the case of U.S. v. Mohammed, including Mr. Mohammed:

1. Reports that suspected al Qaeda operatives were being held by the CIA in "undisclosed locations abroad" began circulating in 2002. By 2004, a number of suspected al Qaeda operatives were declared by human rights advocates to have been "disappeared" by the U.S. government. In September of 2006, the President announced the transfer of the detainees charged in the case of U.S. v. Mohammed and others to Guantanamo after they had been held under great secrecy and subjected to "an alternative set of [interrogation] procedures" outside the United States in a separate program operated by the CIA. (Newell Declaration, para. 5.)

⁴ Ms. Newell has not met or spoken with Mr. Mohammad.

⁵ The detailed footnotes accompanying the excerpts below are omitted for the sake of brevity and to avoid redundancy. The footnotes, however, provide citations to various open source materials and further explanation and information concerning the matters described.

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2. The covert CIA program referred to by the President was authorized under a classified Presidential finding signed on September 17, 2001, which reportedly gave the CIA broad powers to kill, capture, detain and interrogate suspected al Qaeda leaders and their associates. President Bush reportedly signed a new executive order in 2007 after the Supreme Court ruled in 2006 that the Geneva Conventions applied to prisoners who belonged to al Qaeda. (Newell Declaration, para. 6.)

3. Practices associated with the CIA's expanded powers include



4. Given the secrecy surrounding the program, open source information from current and former detainees about their treatment in any tier of CIA custody remains limited. However, while details remain classified, the information about CIA detention and interrogation practices that is publicly available depicts a regime in which extremely coercive treatment was considered legal, necessary and proper, as described below. (Newell Declaration, para. 8.)

5. The "high-value detainee" program was authorized to use extreme measures to control and interrogate detainees.



7. Numerous allegations of mistreatment generally comport with the reported genesis of the CIA's interrogation program. The CIA allegedly turned to psychologists involved in

training U.S. personnel how to resist coercive interrogation for advice on what might “break” captives resistant to questioning. Sources report the program’s legitimate research and development of techniques designed to train U.S. personnel how to withstand interrogation – specifically, techniques utilized by U.S. government instructors in survival training meant to help U.S. personnel prepare for possible detention by captors who would not adhere to the Geneva Conventions – were “reverse-engineered” to design methods for extracting information from foreign detainees. The program was commonly referred to as SERE training, from the acronym for “survival, evasion, resistance, and escape,” and was based in part on studies of North Korea and Chinese practices designed to compel confessions from American prisoners. (Newell Declaration, para. 11.)

8. The CIA program’s supporters reportedly believed these origins gave coercive techniques scientific credibility, making it more likely they would be employed. (Newell Declaration, para. 12.)

9. SERE training is designed to expose a student to a form of “controlled realism” that will prepare him or her for captivity through “stress inoculation” and “stress resolution.” SERE experts note that “too much” pressure on students can induce “learned helplessness,” the point at which stress and duress is no longer a beneficial inoculant to interrogation, but will create vulnerabilities that interrogators can exploit to overcome resistance. News reports describe former SERE instructors working with the CIA as contractors to develop its interrogation program as strong proponents of the “learned helplessness” model to break detainees. (Newell Declaration, para. 13.)

10. Techniques used by the Department of Defense and/or military service SERE programs include but are not limited to: waterboarding, 



12. At various times the CIA sought legal opinions from the Office of Legal Counsel (OLC) of the Department of Justice concerning the legality of detention and interrogation practices used by its officers. Not all these legal opinions have yet been released, or even publically acknowledged. It appears that, as Congress and the courts took steps reasserting or enforcing legal limits on detainee abuse, the Administration took steps to maintain the CIA’s

detention interrogation powers, including the development of additional secret legal guidance. (Newell Declaration, para. 16.)

13. The OLC legal opinions that are publically available indicate that at various times the CIA operated under assurances that some or all domestic and international legal limits on torture and other forms of cruel, inhuman or degrading treatment did not apply to the treatment of alien detainees held overseas by the CIA. In effect, CIA officials were given permission to subject detainees to treatment and conditions considered torture under traditional interpretations of U.S. and international law, and, literally, treatment and conditions considered torture under its own interpretation if so ordered by the President. (Newell Declaration, para. 17.)

14. For example, one 2002 OLC legal opinion redefined "torture" as limited to only the most extreme forms of pain and suffering. The opinion stated that for an act to constitute torture, it must inflict pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death." "Torture" did not include treatment that resulted in "mental suffering" without "pain," and did not include mental pain and suffering that did not result in significant psychological harm lasting for months or even years. In 2004, when OLC repudiated this particular memorandum, the new opinion reasserted a more traditional definition of physical torture, but possibly narrowed the definition of psychological torture even further. Commentators have expressed particular concern that the 2004 memorandum said Congress did not intend to specifically prohibit four practices listed in the federal anti-torture statute as examples of severe mental pain or suffering, and these practices therefore did not necessarily constitute torture unless they actually resulted in prolonged mental harm to the specific victim in question - an analysis that can occur only after the harm has been done. These four practices are:

- (A) The intentional infliction or threatened infliction of severe physical pain or suffering;
- (B) The administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
- (C) The threat of imminent death;
- (D) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering

substances or other procedures calculated to disrupt profoundly the senses or personality.

(Newell Declaration, para. 18.)

15. Open source information suggests how the CIA put OLC legal guidance, known and unknown, into practice. CIA sources have reportedly described “enhanced interrogation techniques” instituted in mid-March 2002 and used on CIA detainees singly and in combination that include but are not limited to [REDACTED] waterboarding, isolation and nudity. In January 2003, then-CIA Director George Tenet issued a policy directive that shows the CIA planned to implement forms of interrogation more extreme than “enhanced interrogation techniques.” [REDACTED]

16. CIA officers reportedly combined multiple forms of treatment. CIA officers reportedly sought the Agency’s legal advice about the application of specific combinations, concerned about the effect of combining techniques. Sources told ABC News that senior Bush administration officials met to discuss and approve CIA interrogations, including those that combined different methods and thereby “push[ed] the limits of international law and even the Justice Department’s own legal approval [...]” In 2005, OLC issued another secret memorandum reportedly authorizing the combination of forms of treatment, including but not limited to waterboarding, [REDACTED]

17. In 2004, CIA Inspector General (“IG”) John Helgerson completed a months-long special review of the Agency’s interrogation practices. The special review investigated at least three deaths of CIA-held detainees in Afghanistan and Iraq; the treatment of three dozen more, including Mr. Mohammad; and seven or eight cases in which the CIA appeared to have abducted and jailed misidentified people. The CIA’s special review concluded the CIA’s techniques constituted cruel, inhuman, and degrading treatment, in violation of the Convention Against Torture. The heavily redacted version of the report that is publically available suggests the IG may have used the OLC legal opinions as a basis for its analysis; it is possible that had the IG used a traditional view of US and international law, he might have concluded CIA techniques constituted torture. (Newell Declaration, para. 21.)

18. Detainees held in the CIA high-value program who were transferred to military custody at Guantanamo in 2006, including detainees charged in the case of *U.S. v. Mohammed*, reported forms of abuse consistent with the foregoing descriptions to the International Committee of the Red Cross (ICRC) after their transfer. The ICRC report itself has not been made public. According to people familiar with its contents, [REDACTED]

[REDACTED] waterboarded. The ICRC reportedly described the CIA's detention and interrogation methods as tantamount to torture. [REDACTED]

V. See Classified Declaration of Counsel Submitted Herewith (Attachment C)

6. Law and Argument:

I. Discovery Under the MCA

The defense is entitled to the discovery hereby requested. "Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense." *See* 10 U.S.C. § 949j; see also, Regulation for Trial by Military Commissions 17-2(a) ("Pursuant to 10 U.S.C. § 949j, the defense counsel in a military commission shall have a reasonable opportunity to obtain witnesses and other evidence as provided by R.M.C. 701-703, and Mil. Comm. R. Evid. 505").

Rule for Military Commission 701(c) provides:

After service of charges, upon a request of the defense, the Government shall permit the defense counsel to examine the following materials:

(1) Any books, papers, documents, photographs, tangible objects, buildings, or places, or copies of portions thereof, which are within the possession, custody, or control of the Government, the existence of which is known or by the exercise of due diligence may become known to trial counsel, and which are *material to the preparation of the defense* or are intended for use by the trial counsel as evidence in the prosecution case-in-chief at trial.

(emphasis added).

The government is required to produce all physical evidence relating to the charges in this case that are in the possession of any governmental agency. *See* R.M.C. 701(c)(1).

As standby counsel for Mr. Mohammed, the undersigned are entitled to discovery on his behalf as a *pro se* accused. *See* M.C.R. 701 (4) ("standby counsel shall examine the evidence and be prepared to provide advice to the accused.")

II. Discovery Need Be Only Material to the Preparation of the Defense

The discussion to RMC 701(c) indicates that the Military Judge should look to *United States v. Yunis*, 867 F.2d 617 (D.C. Cir. 1989) for the definition of "material to the preparation of the defense." In *United States v. Yunis*, the court defined "material to the preparation of the defense" as "helpful to the defense of an accused." *Id.* at 622. Thus, the materiality standard set forth in R.M.C. 701(c) requires the prosecution to turn over any information that is "at least helpful to the defense." *See, also United States v. Lloyd*, 992 F.2d 348, 350-51 (D.C. Cir. 1993) ("materiality is not a heavy burden" and defining "materiality" under Fed.R.Crim.P. 16(a)(1)(C), to include evidence that could "play an important role in uncovering admissible evidence")⁶ (internal quotations omitted); *United States v. Gaddis*, 877 F.2d 605, 611 (7th Cir.1989) (defining material evidence as evidence that would "significantly help [] in 'uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment and rebuttal'" (quoting *United States v. Felt*, 491 F.Supp. 179, 186 (D.D.C.1979)).

III. Discovery In the Military System is Notably Open

It also must be remembered that discovery in this case is sought in the context of a Military Commission and thus the rules applicable to courts-martial provide further guidance. In fact, discovery in the court-martial system is notably open. *See United States v. Williams*, 50 M.J. 436, 439 (C.A.A.F. 1999) ("The military justice system has been a leader with respect to open discovery"). That system also has a solid record of upholding the defense opportunity for access to witnesses: that right is codified in the Uniform Code of Military Justice (UCMJ), and has been reiterated in many decisions of the military's highest court. *See Art. 46, U.C.M.J.; United States v. Warner*, 62 M.J. 114, 119 (C.A.A.F. 2005) ("Under Article 46, the defense's "opportunity to obtain witnesses and other evidence" is to be equal to the Government's"); *United States v. Garries*, 22 M.J. 288, 290 (C.A.A.F. 1986). The Court of Appeals for the Armed Forces (CAAF) recognizes the right of access to witnesses and evidence as part of an accused's Sixth Amendment rights. *See United States v. Woolheater*, 40 M.J. 170, 173 (C.A.A.F. 1994). The CAAF has further held that "access alone is not enough: the defendant has the right to present legally and logically relevant evidence at trial." *Id.*, citing *Ake v. Oklahoma*, 470 U.S. 68, 105 S.Ct. 1087 (1985); *Chambers v. Mississippi*, 410 U.S. 284, 93 S.Ct. 1038 (1973).

⁶ The relevant portion of Federal Rule of Criminal Procedure 16 is nearly identical to R.M.C. 701(c)(1). It states: "Upon a defendant's request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government's possession, custody, or control and: (i) the item is material to preparing the defense." Fed. R. Crim. Proc. 16(a)(1)(E)(i). Interpretations of that federal rule are therefore persuasive here.

IV. International Law Compels Discovery Including Access to Witnesses

The Military Commissions Act (M.C.A.) and the Manual for Military Commissions (M.M.C.) incorporate the judicial safeguards of Common Article 3 of the Geneva Conventions. *See* 10 U.S.C. § 948(b)(f) (“A military commission established under this chapter is a regularly constituted court, affording all the necessary ‘judicial guarantees which are recognized as indispensable by civilized peoples’ for purposes of common Article 3 of the Geneva Conventions.”)⁷; R.M.C., Preamble (stating that the Manual for Military Commissions “provides procedural and evidentiary rules that [. . .] extend to the accused all the ‘necessary judicial guarantees’ as required by Common Article 3.”) They must, therefore, be read in light of Common Article 3 and international law surrounding that provision. The Geneva Convention Relative to the Treatment of Prisoners of War prohibits “the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.” *See* Geneva Convention, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135, Common Article 3. The judicial safeguards required by Common Article 3 are delineated in article 75 of Protocol I to the Geneva Conventions of 1949.⁸ Article 75(4)(g) provides that, “anyone charged with an offence shall have the right to examine, or have examined, the witnesses against

⁷ Whether military commissions, in fact, comply with common article 3 is ultimately a judicial question that Congress does not have the power to answer. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) (“It is emphatically the province and duty of the judicial department to say what the law is.”). Any congressional attempt to legislate an answer to such a judicial question violates the bedrock separation of powers principle and has no legal effect. *See id.* at 176-77 (“The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written.”). Because a statute should be construed to avoid constitutional problems unless doing so would be “plainly contrary” to the intent of the legislature, *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988); *see also Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 347 (1936), the only reasonable interpretation is that § 948b(f) requires military commissions to comply with common article 3.

⁸ *See* Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, art. 75, 1125 U.N.T.S. 3, entered into force Dec. 7, 1978 [hereinafter Additional Protocol]. The Protocol has not been ratified by the United States, but the U.S. government has acknowledged that Article 75 is customary international law. *See Hamdan v. Rumsfeld*, 126 S.Ct. 2749, 2797 (2006) (stating that the government “regard[s] the provisions of Article 75 as an articulation of safeguards to which all persons in the hands of an enemy are entitled”). *See also*, Memorandum from W. Hays Parks, Chief, International Law Branch, DAJA-IA, et. al., to Mr. John H. McNeill, Assistant General Counsel (International), OSD (8 May 1986) (stating art. 75 of Additional Protocol I is customary international law). The Supreme Court has also relied on the Additional Protocol in construing the meaning of Common Article 3 of the Geneva Conventions as applied to military commissions. *See Hamdan*, 126 S.Ct. at 2796.

him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”

V. Exculpatory Evidence

R.M.C. 701(e)(1) requires the government to disclose “the existence of evidence known to the trial counsel which reasonably tends to ...[n]egate the guilt of the accused of an offense charged.” The disclosure requirement under both R.M.C. 701(c) and 701(e)(1) reflect a fundamental principle of U.S. law: The government’s failure to disclose “evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment” *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The *Brady* decision also reaches evidence which bolsters the defendant’s case or goes toward impeachment of prosecution witnesses. *Giglio v. United States*, 405 U.S. 150, 154-55 (1972), or which could have been used to uncover other leads and defense theories and to discredit the government’s investigation. *Bowen v. Maynard*, 799 F.2d 593, 612 (10th Cir.1986); *see, also United States v. Mahoney*, 58 M.J. 346, 349 (C.A.A.F. 2003) (characterizing impeachment evidence as exculpatory evidence); *United States v. LaRouche Campaign*, 695 F. Supp.1265, 1279 (D. Mass. 1988) (exculpatory evidence under Brady Doctrine includes not only documents or testimony admissible in evidence, but also inadmissible materials which, if defendant had access to them, might lead to admissible materials).

The MCA makes *Brady*, at least with respect to exculpatory evidence, applicable to military commissions. *See* 10 U.S.C. § 949j(d)(2). Section 949j(d)(2) of the MCA states that the prosecution must disclose exculpatory evidence that it “would be required to disclose in a trial by general court-martial.” *Brady* governs disclosure of exculpatory evidence in general courts-martial. *Mahoney*, 58 M.J. at 349. Therefore, by virtue of MCA § 949j(d)(2), *Brady* applies to military commissions.

VI. Duty to Search for Evidence in the Possession of the Government

It must be noted that the government’s obligation in this case is not satisfied simply by the prosecuting attorneys’ review of their own files, but extends to “favorable evidence known to the others acting on the government’s behalf in the case. *Kyles v. Whitley*, 514 U.S. 419, 438 (1995). In the terrorism prosecution of Timothy McVeigh arising out of the bombing of the federal building in Oklahoma City, Judge Matsch made the following observation:

Application of the *Brady* doctrine to this case is especially difficult because the scope of inquiry is so broad and the information gathering capability of all government agencies is so great. The lawyers appearing on behalf of the United States, speaking for the entire government, must inform themselves about everything that is known in all of the archives and all of the data banks of all of

the agencies collecting information which could assist in the construction of alternative scenarios to that which they intend to prove at trial. That is their burden under *Brady*. They must then disclose that which may be exculpatory under the materiality standard of *Kyles*. The government has objected to some of Mr. McVeigh's requests as "burdensome." That is not a proper objection. The failure to comply with a constitutional command to present evidence fairly at trial is not excused by any inconvenience, expense, annoyance or delay. Determining materiality of information discoverable under Rule 16 or required to be produced under *Brady* must not be made according to a cost benefit analysis.

United States v. McVeigh, 954 F.Supp. 1441, 1450 (D.Colo.1997). In particular, these same principles were held to apply to intelligence agencies:

At the April 9 hearing, Ms. Wilkinson said that the intelligence agencies were not "aligned" with the criminal investigation and did not provide information. Tr. 50-51. As she then recognized, that does not limit the duty to inquire of such agencies for information which may be exculpatory or impeaching as to the government's evidence or material to the preparation of the defense of Mr. McVeigh and Mr. Nichols. Accordingly, the prosecutors must respond to the defendants' requests for information from a broad perspective of the government as a whole.

United States v. McVeigh, 923 F.Supp. 1310, 1315 (D.Colo.1996); *see, also United States v. Crivens*, 172 F.3d 991, 996 (7th Cir. 1999) ("prosecutors may not simply claim ignorance of Brady material").

Similarly, the prosecution team in the present case, which notably consists of prosecutors from both the Department of Defense and Department of Justice, must respond to Mr. Mohammed's request for discovery "from a broad perspective of the government as a whole." This includes the analysis and production of discovery in the possession of all government agencies and personnel as well as contractors which acted as agents for the government.

VII. Recent Admissions by the Convening Authority Confirm the Discovery is Relevant and Material

Recent open source reports appearing in credible, national news publications, including the Washington Post and Newsweek magazine, quote the Convening Authority for the United States Military Commissions as acknowledging that one of Mr. Mohammed's suspected accomplices, Mohammed al-Qahtani, was in fact tortured while in U.S. custody; and for that reason she decided not to proceed with his prosecution. The Convening Authority also

reportedly “assume[s]” Mr. Mohammed and his four co-accused were also tortured. To counsel’s knowledge there has been no retraction of these reports.

The Convening Authority’s reported statements make the requested discovery relevant and material for several reasons.

First, the statements constitute an admission by a senior prosecuting official that reports of Mr. Mohammed’s torture are credible, and thereby establish the likely existence of the discovery requested by the defense.

Second, the statements constitute a concession that the government’s infliction of torture is a factor to be considered in determining whether to refer charges; and may be sufficient to preclude such referral. Mr. Mohammed was therefore entitled to have the Convening Authority consider all relevant information regarding his custodial treatment, including torture, in deciding whether to refer charges; and Mr. Mohammed is entitled to discovery of such information now so that he may request it be considered by the Convening Authority in deciding whether the referral of charges should be withdrawn.

Third, to the extent the Convening Authority has failed to investigate the assumed torture, the reported statements constitute an admission that she has willfully failed to inform herself and consider facts and circumstances – i.e., official infliction of torture – that she recognizes may provide a legitimate basis for deciding not to refer charges, and thus should have been considered. See R.M.C. 401, 406. The requested discovery, including both information regarding custodial treatment and all memoranda and other documents relating to Mr. Mohammed, is relevant and material to determine whether the disparate treatment accorded Mr. Mohammed, compared with Mr. Qahtani, was discriminatory, constituted unequal treatment or was otherwise affected by impermissible factors, e.g., conflicts of interest or improper command influence. Because the risk that such factors have influenced the decision to prosecute Mr. Mohammed in a capital case, the risk is deemed unacceptable under the Eighth Amendment in direct relation to the ease with which it may be eliminated. See *Turner v. Murray*, 476 U.S. 28 (1986). The risk that such factors may have had an impermissible, pervasive impact on the prosecution of this case may be investigated and eliminated by affording Mr. Mohammed the requested discovery.

VIII. Heightened Reliability Is Required in Death Penalty Cases

This discovery request also must be considered in the context of the heightened need for reliability in capital punishment cases, and the corresponding expansive scope of admissible mitigating evidence, both of which are mandated by the Eighth Amendment. The death penalty “is a punishment different from all other sanctions in kind rather than degree.” *Woodson v. North Carolina*, 428 U.S. 2890, 303-304 (1976). The Supreme Court has held consistently that

because death is uniquely severe and irreversible “the Eighth Amendment requires increased reliability of the process by which capital punishment may be imposed.” *Herrera v. Collins*, 506 U.S. 390, 405 (1993). The Eighth Amendment reliability requirement thus applies to both the guilt and sentencing phases of a capital case. See *Beck v. Alabama*, 447 U.S. 625 (1980); *Lockett v. Ohio*, 438 U.S. 586 (1978).

Standards governing the constitutionally adequate investigation and preparation of the defense in a capital case require informed investigation of all exculpatory and incriminating evidence, as well “efforts to discover *all reasonably available* mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor.” *Wiggins v. Smith*, 539 U.S. 510, 524 (2003) (quoting the “well-defined norms” contained in the ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases)(Court’s emphasis). See, also, *Rompilla v. Beard*, 545 U.S. 374 (2005) (failure to examine file of defendant’s prior sexual assaults constituted prejudicially deficient performance).

The Rules for Military Commission acknowledge the accused’s rights to obtain and present a broad scope of potentially exculpatory and mitigating evidence. M.C.R. 701(e) also requires the prompt disclosure of evidence known to trial counsel which reasonably tends to “reduce the degree of guilt of the accused of an offense charged,” or “reduce the punishment.” M.C.R. 701(e). Prosecutorial disclosure of such items is mandatory subject only to invocation of a claim of national security privilege. *Id.*

In turn, the rules of evidence may be relaxed with matters relating to mitigation. R.M.C. 1001 (c)(3). Significantly, the defense “shall be given *broad latitude* to present evidence in extenuation and mitigation.” R.M.C. 1004 (b)(3) (emphasis added). This encompasses all evidence “affecting [the] credibility of a witness whose reliability may be dispositive as to whether the jury returns a verdict of life or death.” *Giglio v. United States*, 405 U.S. 150, 154 (1972).

IX. Fifth, Sixth and Eighth Amendments to the Constitution

Lastly, this request should be reviewed in light of the holding in *Boumediene v. Bush*, 128 S. Ct. 2229 (2008) that the extraterritorial effect of particular constitutional provisions will be based on “objective factors and practical concerns, not formalism.” *Boumediene*, 128 S. Ct. at 2258. This request relates to the Fifth, Sixth and Eighth Amendments to the Constitution.

7. Requested Discovery⁹

I. Documents Regarding the Apprehension and Treatment of Mr. Mohammed and Other So Called High Value Detainees

a. Items from July 2, 2008 Request

Counsel's initial discovery request (Attachment A), included several items related to the apprehension and treatment of Mr. Mohammed and other so called high value detainees. Those requests and the government's response are summarized as follows:

Statements by Mohammed, the other accused or potential witnesses. (Request No. 1). The government disclosed only limited statements made during a few FBI interviews at GTMO, and has not otherwise produced the requested statements, including any statements made by Mr. Mohammed while he was in the custody of the CIA. As reflected in the footnotes to the 9/11 Commission Report which extensively cited to interrogations of Mr. Mohammed prior to his transfer to GTMO, an untold number of additional statements exists which have not been produced by the government in discovery.

Identities of investigators, interrogators and informants involved in investigation of case. (Request No. 3). The government has refused to identify such persons.

Notes or memoranda prepared in relation to Mr. Mohammed, other accused or any government witness. (Request No. 4). The government refuses to produce material responsive to this request, including interview logs and logs of visitors of Mr. Mohammed while detained at GTMO or elsewhere.

Documents relating to communications with foreign or domestic agents concerning Mr. Mohammed. (Request No 5). The government has refused this request.

Documents related to Mr. Mohammed's confinement and interrogations including while in the custody of the CIA or others on behalf of the U.S., standards of conduct/standard operating procedures (SOP's), interrogation plans and notes, and interrogation techniques authorized for use. (Request Nos. 8 and 23). The government has stated it will produce only "statements of the accused" that it deems "relevant and material to the charged offenses," but has refused to produce the other requested discovery.

Documents related to the capture of Mr. Mohammed as well as individuals

⁹ The following categories of discovery are relevant to this motion but are not intended to encompass all discovery required to be produced by the government.

associated with this capture. (Request No. 10). The government has refused to produce such records.

Documents concerning the physical or mental health of Mr. Mohammed including medical records. (Request Nos. 11 and 13). The government has refused to produce such records.

Reports of physical or mental examinations, and of scientific tests or experiments concerning Mr. Mohammed. (Request No. 12). The government has refused to produce this discovery.

Records related to reports of ill treatment of prisoners at GTMO or any other facility where Mr. Mohammed was held or interrogated. (Request No. 14). The government has refused to produce this discovery.

Records relating to interrogation methods permitted or used at Guantanamo Bay Naval Base or any other facility where Mr. Mohammed has been held or interrogated. (Request No. 15). The government has refused to produce this discovery.

Identity of persons involved in the detention and/or interrogation of Mr. Mohammed at GTMO or at any other facility where he was held or interrogated. (Request No. 16). The government has refused to identify such persons.

All documents or information regarding mistreatment of Mr. Mohammed which is defined to include the use of any "special interrogation plan," "harsh interrogation techniques" or other interrogation methods. (Request No. 18). The government has refused to produce such discovery.

Interrogation manuals, directives, instructions and other policy guidance issued by any agency involved in the detention and interrogation of Mr. Mohammed or of any other witness in the case. (Request No. 19). The government has refused to produce such discovery.

Documents related to investigations into the conduct of U.S. government employees or contractors performing interrogations following the events of September 11, 2001. (Request No. 22). The government has refused to produce this discovery.

Documents relating to the death of all detainees held in U.S. custody at Bagram Air Base, Afghanistan, Guantanamo or any so called "black site" utilized by the United States including the C.I.A. following the events of September 11, 2001. (Request No. 26). The government has refused to produce this discovery.

Evidence which would be exculpatory, or inconsistent with statements made by Mr. Mohammed during the CSRT hearing or during any interrogation or interview by the government or its agents. (Request No. 40). The government has stated it will produce "statements relevant and material to the charged offenses, and those that are exculpatory."

Documents and materials related to the interrogation, interviewing, or confinement of Mr. Mohammed by the U.S., including but not limited to the CIA or any private contractors, during which techniques were used which have been described by the government as waterboarding or "enhanced interrogation techniques." All other documents and material related to the interrogation, interviewing or confinement of Mr. Mohammed utilizing any other technique or method. In requesting these materials, counsel for Mr. Mohammed referenced for trial counsel the numerous public sources describing this including statements by CIA director, Michael Hayden to the United States Congress as well as

 (Request No. 41¹⁰). The government has refused to produce discovery responsive to this request.

Documents and materials as described in the preceding request relating to the other accused. (Request No. 43). The government has refused to produce discovery responsive to this request.

Documents related to the capture, arrest, custody, interviewing, interrogation or any other treatment of the children of Mr. Mohammed by the U.S. government, U.S. government agents, civilian contractors or any foreign agent or country. (Request No. 50). The government denied this request for discovery.

All photographs, videotapes or visual depictions of Mr. Mohammed including any surveillance photos or photographs taken following his capture or while in custody. (Request No. 51). The government has agreed to produce only such discovery it determines to be relevant and material and which it intends to utilize at trial.

All discovery that may mitigate the punishment in this case. Included in the

¹⁰ It should be noted that the numbering following request No. 47 in Mr. Mohammed's request for discovery, at page ten, returns to request No. 40 resulting in redundant numbering (but different requests) for requests 40-47. The referenced Request No. 41 is the latter request of this same number. The undersigned counsel apologizes for any confusion this may cause.

various subparts of this request is evidence depicting the conditions under which Mr. Mohammed was confined from the time of his apprehension to present. (Request No. 56). The government indicated in response to this request it "understands its obligations."

b. Additional Requested Discovery

Since Mr. Mohammed's initial July 2, 2008 request, independent factual investigation and analysis of open source materials has enabled counsel to identify a more specific description of requested discovery that fall within the more general subject matter and categories of discovery stated in this initial request. The foregoing investigation and analysis also has generated names of witnesses or potential witnesses who possess potentially relevant information. The identified requested discovery, including names of potential witnesses, set forth in the attachments described below are not derivative of classified evidence obtained by counsel for Mr. Mohammad. Indeed, the government has not provided to the undersigned counsel classified discovery encompassing this subject matter.

Thus, counsel makes no representations that would tend to confirm, deny or otherwise corroborate the requested discovery including witnesses. The matters set forth in the attachments may, however, provide the prosecution and Military Judge with guidance concerning the specific matters upon which Mr. Mohammed seeks discovery.

- G. List of Requested Discovery and Documents Relating to HVD Program and Apprehension and Treatment of Mr. Mohammed,¹¹
- H. List of Requested Discovery and Documents Related to the apprehension and treatment of Mr. Mohammed and other high value detainees,¹²
- I. List of Potential Fact Witnesses.¹³

Finally, it must be remembered that since the undersigned counsel have not been *provided any discovery concerning these matters, they cannot state that the attached memoranda and requested discovery encompass all relevant and discoverable documents.*

¹¹ This attachment was prepared by Katherine Stone Newell, who has not spoken with Mr. Mohammed nor reviewed classified discovery in this case.

¹² The matters reflected in this attachment were prepared by a private investigator who has neither spoken with Mr. Mohammed nor reviewed classified discovery in this case.

¹³ The matters reflected in this attachment were prepared by a private investigator who has neither spoken with Mr. Mohammed nor reviewed classified discovery in this case.

c. Materiality of Requested Items

The requested items regarding the apprehension and treatment of Mr. Mohammed and other high value detainees are relevant and material to the defense of Mr. Mohammed in a number of ways.

1. Military Commission Rule of Evidence (M.C.R.E.) 304(a)(1) Statements

The requested discovery is relevant and material to the determination of whether any of the statements allegedly made by Mr. Mohammed were produced by torture and/or coercion and/or were the production of interrogation methods amounting to cruel, inhuman or degrading treatment. See 18 U.S.C. § 2340 and Mil. Comm. R. 304. Under Military Commission Rule of Evidence (M.C.R.E.) 304(a)(1) statements elicited through torture are not admissible. Under M.C.R.E. 304(c)(1), statements obtained before December 30, 2005 that were obtained through coercion are not admissible if they are unreliable or the interests of justice would not best be served by their admission. In examining whether a statement admitted through coercion should be admissible the commission considers the totality of circumstances.

Thus, the requested records are clearly material to whether or not Mr. Mohammed's statements are admissible under the evidentiary rules. The requested discovery is critical to the defense's ability to move for suppression of statements under M.C.R.E. 304(a)(1) or 304(c) on either the basis of torture or coercion resulting in unreliable statements. Indeed, the Discussion accompanying M.C.R.E. 304(c) explicitly provides that information such as that requested by the defense is material: "In evaluating whether [a statement made before December 30, 2005] is reliable and whether the admission of the statement is consistent with the interests of justice, the military judge may consider *all relevant circumstances, including the facts and circumstances surrounding the alleged coercion, as well as whether other evidence tends to corroborate or bring into question the reliability of the proffered statement.*" (Emphasis added).

The foregoing reflects the long held concern of American courts regarding the admission of the use of statements obtained through coercion and how such statements pose a serious threat to civilized notions of justice. See *Schneckloth v. Bustamonte*, 412 U.S. 218 (U.S. 1973) ("At the other end of the spectrum is the set of values reflecting society's deeply felt belief that the criminal law cannot be used as an instrument of unfairness, and that the possibility of unfair and even brutal police tactics poses a real and serious threat to civilized notions of justice. In cases involving involuntary confessions, this Court enforces the strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will." *Id.* at 225).

The *Schneckloth* Court reiterated that "[I]n determining whether a defendant's will was

over-borne in a particular case, the Court has assessed the totality of all the surrounding circumstances -- both the characteristics of the accused and the details of the interrogation." *Id.* at 227. Similarly, the M.C.A. employs a totality of the circumstances test to determine whether the circumstances warrant suppression of a statement. While the M.C.A. does not lay out what factors should be considered by the Military Judge, the Supreme Court in *Schneckloth*, listed some of the factors to be taken into account concerning the details of the interrogation: 1) the length of detention; 2) the repeated and prolonged nature of the questioning; and 3) the use of physical punishment such as the deprivation of food or sleep. *Id.* And although *Schneckloth* was decided in the context of the 5th Amendment's due process, the basic requirements of due process are incorporated into the M.C.A. via § 948b(f).¹⁴

The mistreatment or torture of Mr. Mohammed at the hands of agents for the United States at the time he was in the custody of the CIA is not only relevant to the contemporaneous statements made at the time of the mistreatment or torture, it is particularly relevant to the determination of whether coercion existed in later interrogations by the so called FBI "clean teams." Presumably, Mr. Mohammed would not have reason to doubt, during any interrogation, that the interrogators could again engage in physical abuse. *See Arizona v. Fulminante*, 499 U.S. 279, 287 (1991) (recognizing confession can be involuntary as a result of psychological, as well a physical, coercion); *Blackburn v. Alabama*, 361 U.S. 199, 206 (1960) ("[C]oercion can be mental as well as physical, and . . . the blood of the accused is not the only hallmark of an unconstitutional inquisition."); *Columbe v. Connecticut*, 367 U.S. 568, 605-06 (1961) ("There is torture of mind as well as body; the will is as much affected by fear as by force. And there comes a point where this Court should not be ignorant as judges of what we know as men.") (quoting *Watts v. Indiana*, 338 U.S. 49, 52 (1949)).

Finally, the discovery also is material to developing corroborating evidence regarding Mr. Mohammed's statements in Court that he has been tortured. Thus, the discovery is essential to the defense's ability to move for suppression of statements under M.C.R.E. 304(a)(1) or 304(c) on either the basis of torture or coercion resulting in unreliable statements. Discovery relating to apprehension and treatment as outlined above and in Exhibits G and H is clearly relevant and material to determining whether the conditions of apprehension and detention constituted torture or cruel, inhuman or degrading treatment and to a determination of the "totality of circumstances." In fact, the only way to make these determinations is by reviewing the requested discovery.

¹⁴ *See, also Lynum v. Illinois*, 372 U.S. 528, 534, 83 S.Ct. 917 (1963) (due process violated where coerced confession used at trial). "The ultimate test [with respect to the admissibility of confessions] remains that which has been the only clearly established test in Anglo-American courts for two hundred years: the test of voluntariness. Is the confession the product of an essentially free and unconstrained choice by its maker?" *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961).

2. Reliability of Statements

The requested discovery also is relevant and material to the reliability of any of Mr. Mohammed's statements in the event they are not suppressed. If his statements are admitted into evidence, the defense must be able to develop and introduce evidence at trial to demonstrate to the fact finder that they are not reliable. Indeed, M.C.R.E. acknowledges "the right of a party to introduce before the members evidence probative of weight or credibility." *Cf. United States v. Graves*, 23 U.S.C.M.A. 434, 436 (C.M.A. 1975) ("[I]f the matter [voluntariness of a confession] is placed in issue before the jury, the Government must present evidence sufficient to establish, beyond a reasonable doubt, that the inculpatory statement was voluntary. Once the issue is raised, the military judge has a *sua sponte* duty to instruct the court members to reject the accused's confession in toto if they are not satisfied, beyond a reasonable doubt, of the voluntariness of the statement.").

Thus, disclosure of the requested discovery is material, necessary and required by Mr. Mohammed's Sixth Amendment right to present a complete defense. *See Crane v. Kentucky*, 476 U.S. 683 (1986) (defendant denied trial by exclusion of evidence challenging circumstances and reliability of purported confession).

3. Governmental Misconduct

The requested documents are also relevant and material to consideration of the due process implications of the governmental conduct in this case. Governmental conduct may result in a denial of due process appropriately resulting in dismissal. *See* Defense Motion on behalf of Ramzi bin al Shibh to Dismiss for Outrageous Government Conduct filed July 8, 2008.

Where government conduct is so egregious that it "shocks the conscience" and violates the "decencies of civilized conduct" due process is offended. *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998) (quoting *Rochin v. California*, 342 U.S. 165, 172-173 (1952)). The Supreme Court has held that due process bars prosecution in circumstances where governmental conduct goes beyond that "fundamental fairness, shocking to the universal sense of justice, mandated by the Due Process Clause of the Fifth Amendment." *United States v. Russell*, 411 U.S. 423 (1973) (quoting *Kinsella v. United States ex re. Singleton*, 361 U.S. 234, 246 (1960)). *See e.g. United States v. Gaviria*, 116 F.3d 1498, 1534 (D.C. Cir. 1997) (noting that a valid defense of outrageous governmental conduct is limited to a showing of "coercion, violence, or brutality to the person"). *See also United States v. Nolan-Cooper*, 155 F.3d 221, 229 (3d Cir. 1998); *United States v. Lacey*, 86 F.3d 956, 964-65 (10th Cir. 1996).

Here there are substantial allegations based on public sources, outlined in section IV, of governmental conduct that includes detaining Mr. Mohammed for almost six years without

charges and without access to counsel, repeatedly subjecting him to interrogations, torture and mistreatment and complicity in the kidnapping and mistreatment of his minor children. Discovery regarding these allegations is necessary to determine whether the governmental conduct in this case “shocks the conscious” and violated “decencies of civilized conduct” requiring dismissal or other sanction. Review of this discovery is required to determine the detail and level of governmental misconduct with particularity.

4. Legitimacy of Capital Case Proceedings.

In addition and related to the potential Due Process concerns which may be raised depending upon the nature and extent of any official misconduct, capital proceedings may be barred by operation of Mr. Mohammed’s Sixth and Eighth Amendment rights to a fair and reliable determination of guilt and penalty; his Eighth Amendment right to be free from torture; and his Fifth Amendment right against double jeopardy.

a. Right to Fair and Reliable Determination of Guilt and Penalty

As described above, in paragraph IV.e.5 of the Facts, the coercive practices to which Mr. Mohammed may have been subjected were designed to overcome a subject’s resistance to interrogation by dismantling his identity and personality. In addition to being necessary to investigate and establish whether Mr. Mohammed was in fact subjected to such practices, the requested discovery is also relevant and material to determining the degree to which the practices obtained their intended goal, and the lasting effects of such a fundamental alteration of an individual psyche.

It is without question that the impact of such treatment of a pre-trial detainee necessarily would have significant consequences for his attitude and ability to participate in the proceedings or to cooperate with his attorney, particularly if he were still being detained by the authorities and government agents who were responsible for his abusive treatment. Moreover, the government’s forcible alteration of a detainee’s identity and personality would wholly obliterate the central focus of a capital sentencing trial, which is to accurately assess the defendant’s character and background, and the circumstances of his conduct. “Given that the imposition of death by public authority is so profoundly different from all other penalties, we cannot avoid the conclusion that an *individualized* decision is *essential* in capital cases.” *Lockett v. Ohio*, ante, 438 U.S., at 605 (emphasis added).

Thus, the United States Supreme Court has recognized that the government deprives an accused of a fair capital trial when it forcibly alters his mentation and physical presentation through the administration of mind-altering medication. See *Riggins v. Nevada*, 504 U.S. 127 (1992). Such alterations in persona unfairly interfere with the quality and nature of an accused’s interaction with his counsel, and produce an equally unfair distortion of his mannerisms and

appearance before the jury. Here, the degree to which the government has affected similar alterations of the accused's functioning and appearance through forced medication and the lasting effects of traumatic treatment is therefore relevant to determining whether it is possible to give him a fair trial; or whether the prosecution should be prohibited from proceeding.

b. Freedom From Torture

Disclosure of the requested discovery is also relevant and material to determining whether Mr. Mohammed was subjected to waterboarding and other threats of imminent death. If established, there is no question that the nature and purpose of such abuse constitutes torture. The 1990 ratification by the United States of the Convention Against Torture specifically condemned subjecting individuals to "*the threat of imminent death*" as a form of torture, 18 U.S.C. § 2340, subsection (3), and subsection (4) explicitly condemned "the administration or application of mind-altering substances or other *procedures calculated to disrupt profoundly the senses or the personality*." (Emphasis added.)

In turn, more than a century of Supreme Court decisional authority has construed "the *primary concern* of the drafters" of the Eighth Amendment "was to proscribe torture[s] and other barbar[ous] methods of punishment." *Estelle v. Gamble*, 429 U.S. 97 (1976); *Weems v. United States*, 217 U.S. 349, 366, 370 (Eighth Amendment prohibits subjecting a person to "circumstances of terror, pain, or disgrace); *Wilkerson v. Utah*, 99 U.S. 130, 136 (1879) ("safe to affirm that punishments of torture . . . are forbidden by that Amendment"). More recent cases also make it clear that the Eighth Amendment prohibits the *threat* of inflicting unnecessary psychological and physical pain. "[S]ubjecting individuals to a risk of future harm – not simply actually inflicting pain – can qualify as cruel and unusual punishment." *Baze v. Rees*, 553 U.S. ___, 128 S.Ct. 1520, 1531(2008)(plurality opn.); *Estelle v. Gamble*, 429 U.S. at 102.

Depending on the nature and severity of the mistreatment which may have been inflicted on Mr. Mohammed, the *continuing* physical and psychological harm that he thereby has suffered may be sufficiently severe to invoke an Eighth Amendment bar to his further traumatization through the ordeal of trial proceedings or the imposition of a capital sentence.

c. Double Jeopardy

All evidence of the wantonness of any government misconduct and the degree of past, ongoing and future harm inflicted on Mr. Mohammed are relevant and material to determining whether further prosecution and/or capital sentencing would be barred by the Double Jeopardy Clause. The clause applies to any proceeding that leads to the imposition of punishment for criminal conduct. *See, e.g., Dept. of Revenue v. Kurth Ranch*, 511 U.S. 767 (1994). If the government intentionally subjected Mr. Mohammed to threats of imminent death and attempts to destroy his identity, he already, and repeatedly, has been placed "in jeopardy of life," within

the meaning of the Fifth Amendment. *See, e.g., Price v. Georgia*, 398 U.S. 323, 326 (1970). Thus, if it is established that the government repeatedly and summarily punished Mr. Mohammad with torturous methods, including threats of imminent death, the Double Jeopardy Clause would prevent the government from using judicial proceedings to again subject him to a similar ordeal.

Nor would it matter that, if established, it may be shown that the government misconduct was limited to the *threat* of imminent death, rather than an actual attempt to take Mr. Mohammad's life. The Double Jeopardy Clause's prohibition against being "twice put in jeopardy of life" for the same offense reflects a "constitutional policy of finality for the defendant's benefit," *United States v. Jorn*, 400 U.S. 470, 479 (1971), including freedom from being compelled "to live in a continuing state of anxiety and insecurity." *Green v. United States*, 355 U.S. 184, 187 (1957).

5. Sentencing

The requested information is also relevant to any potential sentencing hearing. Defense counsel have a duty to conduct a prompt investigation of the case, exploring all avenues leading to facts relevant to the merits of the case, and the penalty in the event of conviction. "[V]irtually no limits are placed on the relevant mitigating evidence a capital defendant may introduce concerning his own circumstances." *Payne v. Tennessee*, 501 U.S. 808, 822 (1991). *See, also, United States v. McVeigh*, 923 F. Supp. 1310, 1314 (D. Colo. 1996) (quoting ABA, Standards for Criminal Justice, Standard 4-4.1). Defense counsel's duty to investigate facts in mitigation is quite broad, and includes virtually any exculpatory facts regarding the defendant's character, background and record, and the circumstances of the offense. *See, e.g., McKoy v. North Carolina*, 494 U.S. 433, 442, (1990); *Woodson v. North Carolina*, 428 U.S. 280, (1976).

R.M.C. 1001(c) provides that mitigation may be introduced to "lessen the punishment to be adjudged" or to "furnish grounds for a recommendation of clemency." R.M.C. 1001(c) (1)(B). Evidence or information suggesting a mitigating factor is any evidence that might justify a sentence other than death. Such evidence includes all information or material in the Government's custody or control regarding the defendant's character, conduct and good deeds at any time, including, but not limited to, references of any kind (whether by reputation or specific acts and words) from any source that would mitigate against imposition of the death penalty. *See Lockett v. Ohio*, 438 U.S. 586 (1978). Evidence about the apprehension and treatment of Mr. Mohammed may justify a sentence of life imprisonment as opposed to death and the Commission should therefore order the discovery produced.

This evidence is also relevant to provide information to the Commission regarding the length and conditions of Mr. Mohammed's confinement for which he should receive credit for sentencing purposes. Indeed, "credit for pretrial confinement and/or punishment has a long

history in military law.” *United States v. Rock*, 52 MJ 154,156 (C.A.A.F. 1999); *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984). Consistent with the foregoing and the principles enumerated in MCA § 949 and RMC 1002, the Military Commission in *United States v. Salim Ahmed Hamdan* awarded Mr. Hamden credit for the length and conditions of his confinement. Mr. Mohammed is entitled to the same consideration and to discovery relevant to the length and conditions of his confinement.

5. Classified Discovery

To the extent that the discovery sought constitutes classified evidence, defense counsel presently possesses the requisite security clearances to review such evidence in a secure facility. Moreover, the Military Commissions Act specifically addresses the production of classified discovery and mechanisms are presently in place for the handling of such discovery. *See* R.M.C. 701(f) (“Pursuant to 10 U.S.C. §§ 949d(f) and 949j(c), the military judge may issue a protective order to limit the distribution or disclosure to the defense of classified evidence, including the sources, methods or activities by which the United States acquired the evidence.”) Further, the Rules of Evidence also provide an adequate mechanism to protect the interests of national security in the event a party wishes to offer classified evidence during any Commission proceeding. M.C.R.E. 505 (“Classified Information”).

By analogy, it is useful to look to the cases addressing the Classified Information Procedures Act, 18 U.S.C. App. 3, §§ 1-16 (CIPA), which also provides procedures for dealing with classified information in criminal cases. The “purpose of the law is to prevent criminal defendants from ‘graymailing’ the government by threatening to reveal irrelevant but sensitive information during trial.” *United States v. Johnson*, 139 F.3d 1359, 1365 (11th Cir. 1998).

Prior to the Act, such threats presented the government with a Hobson's choice: either allow disclosure of the classified information or dismiss the indictment against the defendant. *United States v. Collins*, 720 F.2d 1195, 1196-97 (11th Cir.1983); Richard P. Salgado, *Note, Government Secrets, Fair Trials, and the Classified Information Procedures Act*, 98 Yale L.J. 427, 427 (1988). CIPA mitigates this dilemma by prescribing pretrial procedures to help resolve issues of discovery and admissibility of classified information. *Salgado*, 98 Yale L.J. at 428.

United States v. Baptista-Rodriguez, 7 F.3d 1354, 1363 (11th Cir. 1994).

Thus, CIPA's purpose is to create an orderly process for the resolution of this dilemma, not to control the admissibility of classified information.

CIPA does not create new law governing the admissibility of evidence. *Collins*,

720 F.2d at 1199. It simply ensures that questions of admissibility will be resolved under controlled circumstances calculated to protect against premature and unnecessary disclosure of classified information. Thus, the district court may not take into account the fact that evidence is classified when determining its "use, relevance, or admissibility." *Juan*, [*United States v. Juan*, 776 F.2d 256 (11th Cir.1985)] 776 F.2d at 258; *Collins*, 720 F.2d at 1199. The relevance of classified information in a given case is governed solely by the well-established standards set forth in the Federal Rules of Evidence. *Anderson*, [*United States v. Anderson*, 872 F.2d 1508, 1517 (11th Cir.), cert. denied, 493 U.S. 1004 (1989)], 872 F.2d at 1514; see Fed.R.Evid. 401-03. If the classified information is admissible under ordinary evidentiary analysis it becomes the government's task to propose an alternative way of conveying the information to the jury that is less damaging to national security.

Baptista-Rodriguez, 17 F.3d at 1363 -1364. To be sure, "CIPA is as concerned with controlling disclosures to the defendant as it is with controlling disclosures to the public." *United States v. Clegg*, 740 F.2d 16, 18 (9th Cir. 1984). But discovery in a criminal case implicates the due process clause of the Fifth Amendment, the Sixth Amendment rights to a fair trial and to counsel, and the requirement that the Defendant have "a meaningful opportunity to present a complete defense." *California v. Trombetta*, 467 U.S.479, 485 (1984); *Crane v. Kentucky*, 476 U.S. 683, 690 (1986); *Herring v. New York*, 422 U.S. 853, 856-57 (1975); *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973); *United States v. Rodriguez*, 799 F.2d 649 (11th Cir.1986) (per curiam); *United States v. Corr*, 543 F.2d 1042, 1051 (2d Cir.1976). As the United States Attorney's Manual states,

[t]hat the information within the possession of the intelligence community is classified shall have no effect either on the prosecutor's obligation to undertake the review of [Intelligence Community] files or on the legally-mandated scope of that review. Similarly, except as modified by CIPA, the prosecutor's obligation to produce to the defendant information found during that review is unaffected by the classified nature of that information.

U.S. Attorneys' Man. § 9-90.210. See also *United States v. Rewald*, 889 F.2d 836, 847 (9th Cir. 1989) (national security interests do not "trump" a defendant's right of access to relevant information absent CIPA section 6(e)(2) sanctions)

In sum, the fact that the discovery sought may be classified is simply not justification, in and of itself, to withhold production of such discovery to counsel for Mr. Mohammed. As noted above, the Military Judge should not take into account the fact that evidence is classified when determining its "use, relevance, or admissibility." Adequate procedures and protections exist under the MCA to order production of the requested discovery to counsel for Mr.

Mohammed. Additionally, the scope of discovery and the procedures utilized by the Court concerning the use and production of discovery to counsel for Mr. Mohammed, *e.g.* the use of substitutions under Rule 701(f)(2)(b), must be viewed in the context of these capital proceedings. Thus, at issue are not only are the protections afforded under the MCA and the due process clause of the Fifth Amendment, the Sixth Amendment rights to a fair trial and to counsel, and the requirement that the Mr. Mohammed have a meaningful opportunity to present a complete defense, but also the need for heightened reliability of these capital proceedings.

7. Complete Statements of Mr. Mohammed

There can be no serious dispute that Mr. Mohammed is entitled in discovery to his complete statements made while in the custody of the United States. Generally speaking, the production of a defendant's statements has become 'practically a matter of right even without a showing of materiality.' *United States v. Haldeman*, 559 F.2d 31, 74, n. 80 (D.C.Cir.1976) (en banc), *cert. denied*, 431 U.S. 933 (1977) (citations omitted)." *United States v. Yunis*, 867 F.2d at 621-622. Notably, this ruling of the D.C. Circuit Court of Appeals in *Yunis* involved production of statements where the Classified Information Protection Act was at issue and notwithstanding the same, the Court acknowledged a presumption in favor of production.

Courts have held that a failure to produce statements of the accused is grounds for a new trial. *See Bagley*, 473 U.S. at 684 (a defendant is entitled to a new trial where "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."); *see also, United States v. Rodriguez*, 799 F.2d 649, 651 (11th Cir.1986) (ruling "that noncompliance with an order to furnish a copy of a statement made by the defendant is so serious a detriment to the preparation for trial and the defense of serious criminal charges that where it is apparent, as here, that his defense strategy may have been determined by the failure to comply, there should be a new trial.") (citing *United States v. Padrone*, 406 F.2d 560, 561 (2d Cir. 1969)); *United States v. Maroney*, 319 F.2d 622 (3d Cir.1963) (finding that failure to disclose defendant's own statement concerning a witness' admission violated *Brady*).

However, these statements are material. What Mr. Mohammed has said about his purported involvement with al Qaeda and the conspiracy and actions for which he is charged, or which may be considered at sentencing, is plainly relevant to his defense in this case. What Mr. Mohammed has said on other subjects also is relevant to matters such as assessing the voluntariness and reliability of all his statements. For example, if Mr. Mohammed were tortured or improperly coerced and under those conditions, admitted to something demonstrably false, this would be relevant to assessing the voluntariness and reliability of his statements on other more directly relevant subjects.

Inconsistencies between statements also is significant and the timing of particular declarations could be significant when analyzed in the context of particular interrogation techniques.

If the government is permitted to withhold Mr. Mohammed's statements, then he is deprived of the chance to prepare an adequate defense. *See United States v. Noe*, 821 F.2d 604, 607 (11th Cir 1987) (on appellate review, "the degree to which those rights [to a fair trial] suffer as a result of a discovery violation is determined not simply by weighing all the evidence introduced, but rather by considering how the violation affected the defendant's ability to present a defense"). Given questions concerning the circumstances of Mr. Mohammed's interrogations, it is even more important for the defense to have the entirety of his statements.

8. Names of Witnesses

Mr. Mohammed also is entitled to the names of witnesses to his treatment and others with knowledge of the treatment and underlying policies. It is entirely possible that a written record concerning all aspects of Mr. Mohammed's treatment including acknowledged waterboarding and other mistreatment by the government was not created or no longer exists (especially given the acknowledgement by CIA officials that they destroyed videotapes of the waterboarding of certain CIA detainees). The only means of obtaining this information will thus be through witness testimony. Further, it is well established in American jurisprudence that a violation of constitutional dimension arises "where the Government fails to disclose impeachment evidence that could have been used to impugn the credibility of the Government's 'key witness,' *see Giglio v. United States*, 405 U.S. 150, 154-55, 92 S.Ct. 763 (1972), or that could have 'significantly weakened' key eyewitness testimony. *Kyles*, 514 U.S. at 441, 453, 115 S.Ct. 1555." *Conley v. United States*, 415 F.3d 183, 189 (1st Cir. 2005). Eyewitness evidence is invariably potential impeachment evidence: an eyewitness may contradict discrete but critical facts offered by another witness; or, an eyewitness may fully challenge another's testimony. It is entirely appropriate, therefore, to receive in discovery the requested witness names.

To preliminarily assist the government in identifying relevant witnesses, see attachments hereto described in Section 7.1.(b).

9. Treatment of Other Detainees Including High Value Detainees

Mr. Mohammed's claim in court that he was tortured is corroborated if other detainees including high value detainees held at the same locations as Mr. Mohammed were tortured or mistreated as they too have stated - and as has been widely reported.

In *United States v. Karake*, Rwandan defendants in a federal criminal case moved to suppress inculpatory statements they had made to Rwandan and United States officials on the ground that their statements were “the product of physical and psychological coercion, resulting from both their conditions of confinement and their treatment while in Rwandan custody.” 443 F. Supp. 2d 8, 12 (D.D.C. 2006). During an evidentiary hearing on the defendants’ motion to suppress, third-party witnesses who had been held at the same Rwandan detention facility as the defendants testified that they had been mistreated and subjected to coercive interrogations at the facility. *See id.* at 12-13, 69-70. The defense offered the third-party witnesses’ testimony in order to corroborate defendants’ claims that “systematic and repeated physical abuse” caused them to make the inculpatory statements. *Id.* at 59, 69.

The *Karake* Court found “the corroboration of defendants’ testimony” to be “compelling,” observing that “[t]wo other witnesses testified about their personal experiences while at Kami [the detention center] in years prior to defendants’ detention; former high-ranking officials . . . [who held office] during the relevant time period provided information regarding the abuses at Kami; and State Department reports and other reports to U.S. government officials documented rampant human rights violations, including specific reports of torture at Kami.” *Id.* at 61. In addition, the court found “unpersuasive” the government’s argument that the court should “disregard . . . as out of time” the testimony of the two witnesses who had been tortured at Kami, noting that the same Rwandan authorities had controlled the prison during the times that the defendants and the third-party witnesses were incarcerated there. *Id.* at 71-72. The Court also considered other evidence corroborating the defendants’ claims of coercion, including U.S. government reports on “numerous serious” human rights abuses by the Rwandan government, including abuses at the detention center where the defendants had been held. The court determined that such corroborating evidence created an inference that the practices and conditions that the two witnesses experienced endured throughout the period in which the defendants were held at the facility. *Id.* at 71. Finally, the court credited “[f]urther evidence of continuing abuse and torture,” provided by two former Rwandan government ministers “who learned about the serious problems at Kami” over the relevant time period. *Id.* at 71-72. Such corroborating evidence led the Court to grant defendants’ motions to suppress coerced inculpatory statements made by defendants to investigators.

As in *Karake*, the requested discovery concerning the treatment of other detainees would corroborate Mr. Mohammed’s claims and be material, *inter alia*, to whether Mr. Mohammed’s statement should be suppressed because they were obtained by government coercion. Discovery of other abuse would also be relevant to the issue of government misconduct and whether it occurred systemically and as a matter of

policy. The government has been fond of arguing in this context, detainee abuse occurred as a result of a few "bad apples." Evidence that this occurred on a widespread basis, as a matter of government policy, or simply evidence that these were not isolated events limited to Mr. Mohammed, will refute this notion and be material to assessing the propriety of the actions of the government and what sanctions, if any, to which Mr. Mohammed is entitled.

d. Conclusion

These items are clearly relevant to Mr. Mohammed's defense, to whether or not Mr. Mohammed's statements are admissible, and to what weight the statements should be given if they are admitted. The matters also are relevant to sentencing factors and what sanctions, if any, should follow as a result of government misconduct. The requested discovery meets the minimal standard of being "helpful to the defense of [the] accused." Indeed, it is key to the defense's ability to test the government's case and to the fact finder's ability to weigh the evidence and adjudicate a sentence. Therefore, discovery relating to the apprehension and treatment of Mr. Mohammed must be disclosed under R.M.C. 701 and 1001.

II. Items Relating to the Government's Investigation of Mr. Mohammed and his alleged coconspirators prior to and after the events of September 11, 2001 and the government's investigation into the events of September 11, 2001, al Qaeda and Osama bin Laden

a. Items from July 2, 2008 Request

Counsel's initial discovery request (Attachment A), included several items related to the Government's Investigation of Mr. Mohammed and his alleged coconspirators prior to and after the events of September 11, 2001, and the government's investigation into the events of September 11, 2001, al Qaeda and Osama bin Laden. Those related requests and the government's responses were as follows:

Documents believed to be al-Qaeda training materials. (Request No. 27). The government has stated it will produce relevant and material documents it intends to offer at trial.

Reports or memoranda related to the investigation of Mr. Mohammed or other co-accused prior to or after the events of September 11, 2001. (Request No. 39). The government has stated it will produce what it determines to be relevant responsive materials but has produced very little, as outlined above.

Discovery related to Mr. Moussaoui and *United States v. Zacarias*

Moussaoui, Criminal NO. 01-455-A (U.S. District Court for the Eastern District of Virginia) (Request No. 52). The government has denied this request.

Documents related to the investigation by the United States into the events of September 11, 2001, al Qaeda and Osama bin Laden. (Request No. 53). The government denied this request.

Discovery that may mitigate the punishment in this case. Included in the various subparts of this request is evidence depicting the conditions under which Mr. Mohammed was confined from the time of his apprehension to present. (Request No. 56). The government indicated in response to this request it "understands its obligations."

b. Additional Requested Discovery

Since that initial request, counsel has generated a more detailed list of requested discovery relating to these areas and has attached these requested items. (Attachment J.) These items fall under the more general requests made in the July 2, 2008 Request.

c. Materiality of Requested Items

The requested items regarding the investigation of Mr. Mohammed and his alleged coconspirators prior to and after the events of September 11, 2001 and the government's investigation into the events of September 11, 2001, al Qaeda and Osama bin Laden are relevant and material to the defense of Mr. Mohammed in a number of ways.

1. Statements and other discovery relating to the alleged offenses

Mr. Mohammed is charged with participating in a wide ranging conspiracy responsible for the attacks of September 11, 2001. He is further charged with being associated with al Qaeda and, among other matters, providing material support to this "international terrorist organization." Specifically, Charge IX, Specification 1, alleges that Mr. Mohammed and the other co-accused:

did, at various locations, from in or about 1996 to in or about May 2003, while in the context of and associated with armed conflict, intentionally provide material support and resources to al Qaeda, an international terrorist organization founded by Usama bin Laden, in or about 1989, and known by the five accused to be an

organization that engages in terrorism, said al Qaeda having engaged in hostilities against the United States, including attacks against the American Embassies in Kenya and Tanzania in August 1998, and the attack against the USS Cole in October 2000.

This far reaching allegation against Mr. Mohammed puts at issue a wide breadth of discovery to which he is entitled, literally none of which has been produced by the government. The requested items include discovery relevant to investigation of Mr. Mohammed and his alleged coconspirators prior to and after the events of September 11, 2001 and the government's investigation into the events of September 11, 2001, al Qaeda and the other matters alleged by the government above. As a starting point, Mr. Mohammed is entitled therefore to immediate disclosure of any statements relating to these items. M.C.R. 701. He is further entitled to the investigative materials related to these matters including but not limited to any surveillance, witness interviews or intercepted communications concerning Mr. Mohammed as such matters are necessary to the preparation of his defense.

Mr. Mohammed also is entitled to discovery concerning the matters referenced during his CSRT. It is anticipated that the government will rely on such statements at either the guilt or penalty phase of this case and accordingly, discovery relevant to these matters is material and necessary to the preparation of Mr. Mohammed's defense.

2. Sentencing

M.C.R. 701(d) requires that the defense be permitted to examine any written materials as will be presented by the prosecution at any pre-sentencing proceedings. If the government intends to present or rely on any writing that reflects or resulted from the investigation into Mr. Mohammed and his alleged coconspirators before and after the events of September 11, 2001, the investigation into the events of September 11, 2001, or the investigations into al Qaeda and Osama bin Laden, it is required to produce this information immediately. Even if the government does not intend to rely on any such writings, it is material to Mr. Mohammed's defense at sentencing and should be produced.

The requested items are relevant to potential mitigating and extenuating factors to be considered at any possible sentencing phase. R.M.C. 1001(c)(3), (e), 1004. *See e.g. Tennard v. Dretke*, 542 U.S. 274 (2004) (expansive view of mitigating evidence). *See also McKoy v. North Carolina*, 494 U.S. 433, 440 (1990). R.M.C. 1001(c) provides that matters in extenuation may be introduced to "explain the circumstances surrounding the commission of an offense, including those reasons for committing the offense that do not constitute a legal

justification or excuse.” R.M.C. 1001 (c) (1)(A).

Discovery about this category of items is material and relevant to consideration of the participation, direct or indirect, of other persons who either planned, ordered, directed or directly participated or aided and abetted in any way the alleged offenses. Discovery about this category of items is also material to consideration of others who are equally culpable in the crime but who will not be punished by death. The requested information must be disclosed so that defense counsel can fully investigate the overall culpability of others as compared with Mr. Mohammed. *See Parker v. Dugger*, 498 U.S. 308 (1991) (relative culpability of accomplices is relevant factor for consideration in mitigation). *See, also, Holmes v. South Carolina*, 547 U.S. 319 (2006) (excluding evidence of third-party guilt constituted denial of fair trial) The requested discovery regarding these investigations is material to both “reduc[ing] the degree of guilt of the accused of an offense charged,” and “reduc[ing] the punishment.” M.C.R. 701(e). Disclosure is therefore mandatory subject only to invocation of a claim of national security privilege (*Id.*) - which as discussed more fully above, must be viewed in the context of these capital cases.

d. Conclusion

These items are clearly relevant to Mr. Mohammed’s defense, and to several possible mitigating and extenuating factors at sentencing. The requested records meet the minimal standard of being “helpful to the defense of [the] accused.” Indeed, they are required for the fact finders to weigh the evidence and adjudicate a sentence. Therefore, documents relating to the identified investigations must be disclosed under R.M.C. 701 and 1001.

III. Property Seized from or Belonging to Mr. Mohammed

a. Items from July 2, 2008 Request

Counsel’s initial discovery requests (Attachment A), included requests for property seized from or believed to be owned by Mr. Mohammed and property seized from other accused. Those requests and the government’s responses are as follows:

Property seized from or believed to be owned by Mr. Mohammed including the computer hard drive referenced in the CSRT hearing as well as any reports generated in connection with this property. (Request No. 6). The government has stated it will only produce those materials it intends to use at trial including material “from the computer hard drive....”

Property seized from any other accused as well as any reports generated in connection with this property. (Request No. 7). The government has stated it will produce what it determines to be relevant including materials it intends to use at trial.

b. Materiality of Requested Items

The government has alleged that computer hard drives seized during the capture of Mr. Mohammed contained the following: information about the four airplanes hijacked on 11 September 2001 including code names, airline company, flight number, target, pilot name and background information, and names of the hijackers; photographs of 19 individuals identified as the 11 September hijackers; a document that listed the pilot license fees for Mohammad Atta and biographies for some of the 11 September 2001 hijackers; images of passports and an image of Mohammad Atta; transcripts of chat sessions belonging to at least one of the 11 September 2001 hijackers; three letters from Usama bin Laden; spreadsheets that describe money assistance to families of known al Qaeda members; a letter to the United Arab Emirates threatening attack if their government continued to help the United States; a document that summarized operational procedure and training requirements of an al Qaeda cell; and a list of killed and wounded al Qaeda martyrs. (Unclassified CSRT hearing, pages 5 and 6, Attachment D.)

The defense should be afforded the opportunity to examine and independently test any physical evidence seized. The reliability and accuracy of these reports and the custody, possession and control of this evidence is obviously relevant and material to Mr. Mohammed's ability to defend himself. If any information about these reports will be presented at sentencing, the reports must also be produced pursuant to R.M.C. 701(d). If there are any sworn statements regarding the search and/or seizure of these items, they "relate to the offense" and must therefore be produced as well. R.M.C. 701(b).

c. Conclusion

These items should be available to the defense for independent testing and are relevant to Mr. Mohammed's defense. They will allow the defense to test the government's case. These requests meet the materiality standard set forth in R.M.C. 701(c) as they are "at least helpful to the defense."

IV. Other Discovery Regarding Mr. Mohammed

a. Items from July 2, 2008 Request

Counsel's initial discovery request (Attachment A), included requests for several items relating to Mr. Mohammed. Those requests and the government's responses are as follows:

Polygraph examinations of Mr. Mohammed. (Request No.21). The government has agreed to produce this to the extent such documents exist and according to the government, are relevant and material to the charged offenses.

Evidence which tends to negate or reduce the guilt or punishment of Mr. Mohammed or other accused. (Document No. 33). The government has stated it "understands its obligations" but has not produced such evidence as more fully discussed herein.

Discovery material relevant to the preparation of Mr. Mohammed's defense including any sentencing proceeding or intended for use by the prosecution at trial. (Request No. 37). The government has stated it will produce such documents it intends to use at trial.

Evidence which would be exculpatory, or inconsistent with statements made by Mr. Mohammed during the CSRT hearing or during any interrogation or interview by the government or its agents. (Request No. 40). The government has stated it will produce "statements relevant and material to the charged offenses, and those that are exculpatory."

Audio and video recordings including any transcript of the accused while inside the Military Commission courtroom including for the proceedings which occurred on 5 June 2008. This request was specifically noted to include all recordings of the accused whether the military judge was present inside the Courtroom or not. (Request No. 46). The government responded by directing Mr. Mohammed to order a transcript of the proceedings pursuant to the trial judiciary rules. The government does not indicate whether it recorded conversations or statements by the accused in the courtroom (ELC) which occurred outside the presence of the military judge.

b. Materiality of Requested Items This information is relevant to defense counsel's investigation of the conditions under which Mr. Mohammed's statements were made, whether those statements are admissible under R.M.C. 304 and whether the statements, if admissible are reliable. Some of this information is also relevant to government conduct that may have Fifth Amendment implications.

Some of the above requests are made pursuant to R.M.C. 701(b)(1) which requires production of any sworn or signed statement relating to an offense charged in the case. Others relate to written materials the government will present at pre-sentencing proceedings are also required to be produced. R.M.C. 701(d).

Furthermore, the requested information is relevant to sentencing to the extent that his prior treatment may be considered in reducing his punishment. Additionally, this evidence relates to "reduc[ing] the degree of guilt," and "reduc[ing] the punishment." M.C.R. 701(e).

Disclosure is therefore required subject only to invocation of a claim of national security privilege. *Id.* This information also suggests mitigating factors that might justify a sentence other than death R.M.C. 1001(c).

c. Conclusion

These above requests regarding discovery relating to Mr. Mohammed are material to Mr. Mohammed's defense both to test the government's case and with respect to mitigating and extenuating circumstances. The requests therefore meet the materiality standard set forth in R.M.C. 701(c) in that the material is "at least helpful to the defense." The Commission should therefore order this information produced.

V. Government Monitoring or Recording of Meetings with Counsel

a. Items from July 2, 2008 Request

Counsel's July 2, 2008 request included the following request and the government gave the indicated response:

Past or current monitoring or recording of Mr. Mohammed's meetings with his attorneys including the undersigned attorneys. (Request No. 48). The government has indicated "your attorney client communications are not being listened to." The government, however, does not state whether meetings with Mr. Mohammed and counsel are being recorded, either through audio or video recordings, whether such recording or monitoring occurred previously or whether any such meetings have been visually monitored.

b. Materiality of Requested Items

The discovery related to monitoring Mr. Mohammed's meetings with his attorneys is relevant and material to the way Mr. Mohammed has been treated by the U.S. Government, whether the attorney client privilege has been honored and whether he is being denied the fundamental right to consult privately with attorneys and the effective assistance of counsel. The government's rather ambiguous assertion that "your attorney client communications are not being listened to" does not precisely answer the question of whether monitoring or recording of meetings with counsel and Mr. Mohammed have occurred. If they have occurred, this information is relevant to determine what sanctions should take place and would be relevant to consideration of a sentence other than death. R.M.C. 1001(c) provides that matters in mitigation may be introduced to "lessen the punishment to be adjudged."

c. Conclusion

Information regarding the government's monitoring of Mr. Mohammed's attorney client communications meets the materiality standard set forth in R.M.C. 701(c) and the Commission should order the prosecution to turn over any responsive information. It is "at least helpful to the defense."

VI. Evidence Regarding Prior Conduct of the United States Government

a. *Items from July 2, 2008 Request*

Counsel requested the following information and the government provided the following response to the July 2, 2008 request:

Evidence that the U.S. provided military training and other assistance, either directly or indirectly, to individuals or groups within Afghanistan resisting the Russian occupation of these areas. By way of example, trial counsel was specifically directed to the Stipulation entered into by the United States for use at trial in the case of *United States v. Usama Bin Laden*, Case No. S(7) 98 Cr. 1023 LBS, United States District Court for the Southern District of New York, confirming that as early as 1979 and continuing until 1991, the United States provided "economic and military support to the Afghan mujahedeen through a third country intermediary" and that such support beginning in 1987 "included Stinger anti-aircraft missiles." (Request No. 55). The government denied this request.

b. *Materiality of Requested Items*

This evidence relates to "reduc[ing] the degree of guilt," and "reduc[ing] the punishment." M.C.R. 701(e). Disclosure is therefore required subject only to invocation of a claim of national security privilege. *Id.*

A matter in extenuation may be introduced to "explain the circumstances surrounding the commission of an offense, including those reasons for committing the offense that do not constitute a legal justification or excuse." R.M.C. 1001(c)(1)(A). This information is material to extenuating matters that might justify a sentence other than death. R.M.C. 1001(c).

c. *Conclusion*

This information meets the materiality standard of "at least helpful to the defense" set forth in R.M.C. 701(c) and the Commission should therefore require the prosecution to produce any information that is responsive.

8. Oral Argument: The Accused requests oral argument pursuant to R.M.C. 905(h). Oral argument will allow for the presentation of witness testimony and assist the Court in identifying and ordering the production of necessary discovery.

9. Witnesses and Evidence: The potential witnesses and evidence are described in the attachments hereto, (Attachments H - K). Depending on the government's response to this motion, Mr. Mohammed reserves the right to call any such witness at a hearing in this matter to determine the existence of relevant discovery.

10. Certificate of Conference: The Defense has conferred with the Prosecution regarding the requested relief. The Prosecution objects to the requested relief.

11. List of attachments:

- A. Defense Request for Discovery dated 2 July 2008;
- B. Government Response to Request for Discovery dated 18 September 2008;
- C. Classified Declaration of Counsel;
- D. Unclassified Transcript of CSRT Hearing on 10 March 2007;
- E. Unclassified Summary of Evidence for CSRT Hearing on 10 March 2007;
- F. Declaration of Katherine Stone Newell dated 21 August 2008;
- G. List of Requested Discovery and Documents Relating to HVD Program and Apprehension and Treatment of Mr. Mohammed;
- H. List of Requested Discovery and Documents Related to the Apprehension and Treatment of Mr. Mohammed and Other High Value Detainees;
- I. List of Potential Fact Witnesses;
- J. List of Requested Documents Relating to Government's Investigation of Mr. Mohammed and his alleged coconspirators prior to and after the events of September 11, 2001 and the government's investigation into the events of September 11, 2001, al Qaeda and Osama bin Laden.

~~TS//SI~~

DATED this 19th day of January, 2009.

By: Khalid Sheik Mohammed, proceeding *Pro Se* and

/s/

Michael L. Acuff, LTC, RES, USAR, USARC
Detailed Defense and Stand By Counsel
Office of Military Commissions
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Attachment A

MEMORANDUM FOR OFFICE OF THE CHIEF PROSECUTOR, OFFICE OF MILITARY COMMISSIONS

FROM: KHALID SHEIK MOHAMMED THROUGH STAND-BY COUNSEL

SUBJECT: Request for Discovery – U.S. v. MOHAMMED, et al.

1. Khalid Sheikh Mohammed, proceeding *pro se*, and through his stand-by counsel, acting at the request and direction of Mr. Mohammed, requests that Trial Counsel disclose, produce and make available for copying to him, and his stand by counsel, the following items and information, whether currently in the possession, custody, control or knowledge of Trial Counsel, the Department of Defense, or any law enforcement or intelligence agent or agency of the United States, or which by the exercise of due diligence may become known to trial counsel.¹ Trial counsel, which includes attorneys from the United States Department of Justice, are reminded of their obligation and duty to search for relevant materials and information in the possession of other government agents and agencies and to ensure that such evidence is preserved and not otherwise destroyed (*see, e.g., Kyles v. Whitley*, 514 U.S. 419 (1995)).

2. Mr. Mohammed further requests that the requested items and information be translated and provided to him in Arabic, his native language, so he may meaningfully review these materials.

3. This Request for Discovery is made pursuant to the Rules for Military Commissions including Rules 701 and 703, the United States Constitution, including the Fifth, Sixth and Eighth Amendments thereto, accepted principles of death penalty jurisprudence and international law, and other applicable authority cited herein.

Discovery Requests

1. Please produce all handwritten, typed, or recorded statements by Mr. Mohammed (hereinafter "the Accused"), or any other accused² or potential witness in connection with the investigation of this case. This includes but is not limited to summaries of conversations with representatives or agents of the U.S. Government including private contractors and

¹ This request for discovery is joined by Ali Abdul Aziz Ali (a/k/a Ammar Al Baluchi), with the express consent of Mr. Ali, through his detailed defense counsel. Mr. Aziz Ali will also file a supplemental request for documents that are specific to his case.

² The other accused, as this phrase is used herein, is intended to refer to the other named accused in this case which are listed on the Charge Sheet as Walid Muhammad Salih Mubarek Bin Attash, Ramzi Binalshibh, Ali Abdul Aziz Ali and Mustafa Ahmed Adam al Hawsawi.

representatives or agents of any foreign government or agency. Additionally, please produce a signed statement from the responsible counsel or official from each concerned intelligence or law enforcement agency of the United States including, but not limited to, the Defense Intelligence Agency (DIA), Central Intelligence Agency (CIA), Federal Bureau of Investigations (FBI), and Naval Criminal Investigative Service (NCIS), and the Department of Defense (DOD), indicating that all potentially relevant existing documents have been provided and/or if a document has been withheld identifying the document, its location, and the reasons for withholding.

2. Please produce any writing or document used by a witness to prepare for trial.

3. Please identify all Government and private investigators, interrogators, translators, and informants, if any, who participated in, are presently participating in, or will participate in, the investigation of this case.

4. Please produce all personal or business notes, including rough notes, memoranda, and writings prepared by investigators or intelligence agents, which are not furnished pursuant to any other provisions of this request, which directly or indirectly mention or pertain to the Accused, any other accused, or any government witnesses or which is otherwise relevant to this case. This includes, but is not limited to, the following:

a. Any statements or reports which may later become discoverable under the Jencks Act, 18 U.S.C. 3500;

b. Internal data pages;

c. Interview logs and logs of all visitors of the Accused, or any other accused, while detained at Guantanamo Bay, Cuba or elsewhere following their arrest or capture; and

d. Informants' notes.

5. Please produce all documents including email relating or referring to the Accused, or any other accused, which was used by any agency or agent of the United States to communicate with any foreign country, foreign agency, foreign agent, foreign investigator, or other agent, investigator or agency of the United States.

6. Please identify and produce for inspection and copying all evidence or property seized from the Accused, or believed to be owned by the Accused, including all evidence that Trial Counsel intends to offer into evidence against the Accused or any other accused in its case in chief and/or sentencing case, including any potential rebuttal case. Also, please produce any documents or reports related to this evidence or property. This includes but is not limited to a computer hard drive reported in the unclassified CSRT proceedings of the Accused to have been seized during his capture and any reports generated in connection with the review

and analysis of the contents of this computer.

7. Please identify and produce for inspection and copying all evidence or property seized from any other accused, or believed to be owned by any other Accused, including all evidence that Trial Counsel intends to offer into evidence against the Accused or other accused in its case in chief and/or sentencing case, including any potential rebuttal case. Also, please produce any documents or reports related to this evidence or property.

8. Please produce all records relating to the Accused's confinement, including but not limited to: visitor logs; disciplinary records; Standards of Conduct/Standard Operating Procedures (SOPs) for guards during all periods during which the Accused has been confined; records/memoranda prepared by the U.S. Government concerning the Accused; interrogations conducted while he was in the custody of the U.S. Government (including the CIA) or held in custody on the behalf or benefit of the U.S. Government, including notes and plans for interrogations; list of interrogation techniques authorized for use while the Accused was confined; and involvement of the Behavioral Science Consultation Teams (BSCTs) in the planning and execution of interrogation sessions.

9. Please produce all documents, including transcripts and recordings, which refer or relate to offers of immunity, or other consideration, made by the Government to others involved in this case in any respect in exchange for cooperation or testimony. If no document exists describing this immunity or other consideration, please describe in detail the offer of immunity or other consideration given and all the circumstances of the cooperation or testimony.

a. The foregoing request is intended to encompass all records, reports, or memoranda of federal investigative or intelligence agencies, foreign governments or their agencies and state and local law enforcement agencies, which describe, refer to, or otherwise comment upon their relationship with any informant involved in this case. This request includes, but is not limited to, records, reports, or memoranda which indicate the statements made by the informant to other persons, including law enforcement agents, as well as motives and reasons for the informant's cooperation with the government, *i.e.*, whether the informant was paid for his services, whether promises were made to the informant in exchange for his services, or whether any action was taken by the government which would be beneficial to the informant in exchange for his services. This request also includes any rough notes used to prepare the above-mentioned records, reports, or memoranda. This request is also intended to include, but is not limited to the "Tiger Team Standard Operating Procedure (SOP) for the JTF GTMO Joint Intelligence Group (JIG) Interrogation Control Element".

b. This request contemplates any records, reports, or memoranda presently within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the

government. *Roviaro v. United States*, 353 U.S. 53 (1957); United States Constitution, Amendment VI.

10. Please produce all documents referring or related to the capture of the Accused which has publicly been reported to have occurred on or about March, 1 2003, in Pakistan and the involvement of the U.S., its agents, or foreign agents in the capture, detention and transfer of the Accused from Pakistan to elsewhere. Please also produce:

a. the names, current phone numbers, e-mail addresses and physical address of all [REDACTED] personnel [REDACTED] involved in the capture and detention of the Accused and the period of each person's involvement; and

b. the names, current phone numbers, e-mail addresses and physical address of all [REDACTED] personnel [REDACTED] involved in the decision to transfer and the transfer of the Accused into U.S. custody and the period and extent of each person's involvement; and

c. any photographs, audiotapes, videotapes, or other recordings obtained in conjunction with the capture or detention of the Accused;

11. Please produce all evidence in control of or known to the government concerning the physical or mental health of the Accused. *See generally, United States v. Green*, 37 MJ. 88 (C.M.A. 1993). Material sought includes, but is not limited to, medical records reflecting mental health diagnosis, medical treatment or injury of any type. *United States v. Brakefield*, 43 C.M.R. 828 (A.C.M.R 1971); *United States v. Brickey*, 8 M.J. 757 (A.C.M.R 1980) *affirmed* 16 M.J. 258 (C.M.A. 1983); *United States v. Eschalomi*, 23 M.J. 12 (C.M.A 1985); R.M.C. 701(c)(2), 706.

12. Please produce any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, that are within the possession, custody, or control of the government at any level, the existence of which is known, or by the exercise of due diligence may become known, to the trial counsel, and which are material to the preparation of the defense, including any sentencing proceeding, or are intended for use by the trial counsel as evidence in the prosecution case in chief at trial. R.M.C. 701(c)(2). This specifically includes, but is not limited to:

a. Copies of the records of any and all medical screenings, physicals, examinations, mental health evaluations, as well as notes prepared by any treating physician, physician's assistant, medic, psychiatrist, psychologist, chaplain, religious advisor, counselor, or other person who has examined the mental or physical condition of the Accused at any time since he entered the custody of the United States (whether or not that custody was transferred at some time), including, but not limited to, all files on the

accused created or kept by any "Behavioral Sciences Team" involved with the accused.

b. The Accused does not authorize the government to review or examine any such reports, notes, or other documents that may be covered by M.C.R.E. 503 or 513, by M.C.R.E. 302, or by common-law privileges and privacy interests with respect to medical treatment. The Accused does, however, request that the government order any such material turned over to the Accused and provide contact information for any person who obtained or created such reports or other material.

13. Please produce any and all records containing information pertaining to the Accused's physical or mental condition. This request includes, but is not limited to, medical records held at Guantanamo Naval Base, as well as records in the possession of any (United States or other) government agency that had contact with the Accused since his detention or apprehension on or about March 1, 2003.

14. Please produce all records relating to alleged, suspected, investigated, substantiated or actual incidents of ill-treatment of prisoners held in or interrogated at Guantanamo Bay Naval Base and any other detention facility where the accused was held or interrogated since his apprehension, including but not limited to (R.M.C. 701 (c), (e); M.C.R.E. 304):

a. Records relating to any person who was ever accused of, investigated for, or charged with ill-treatment of a detainee at Guantanamo Bay Naval Base, and any other facility where the accused was held or interrogated; and

b. Records relating to any prisoner at Guantanamo Bay Naval Base, and any other facility where the accused was held or interrogated, who made an allegation of ill-treatment or who was otherwise involved in an investigation of ill-treatment at any time, including but not limited to all co-accuseds in the instant case, as well as Mr. Jawad, Mr. Al Qahatani, Mr. Manadel al-Jamadi, other specific individuals known from media reports or other sources to have been abused at any facility where the Accused was held or interrogated.

15. Please produce all records relating to interrogation methods permitted or used at Guantanamo Bay Naval Base or any other facility where the Accused has been held or interrogated, including but not limited to (R.M.C. 701 (c), (e); M.C.R.E. 304):

a. Records, logs, notes relating to interrogation methods applied on the accused;

b. Records, logs, notes relating to interrogation methods applied on Abu Zubayda and Abd al-Rahim al-Nashiri;

c. Policies, practices, guidelines, Standard Operating Procedures, Rules of Engagement or other guidance relating to interrogation methods permitted or used at Guantanamo

Bay Naval Base and at any other facility where the Accused has been held or interrogated; and .

d. Copies of any and all video-taped forcible removal of the Accused from any location.

16. Please provide the name and contact information, as well as personnel records of, any person involved in the detention and/or interrogation of the accused at Guantanamo Bay Naval Base, or at any other facility where the accused was held or interrogated. R.M.C. 701 (c), (e); R.M.C. 703; M.C.R.E. 304.

17. To the extent not otherwise produced, please provide the name and contact information, as well as personnel records, of every person who interrogated, questioned or met with the Accused following the detailing of military defense counsel on his behalf, the date of any such interrogation, questioning or meeting, the results of such meeting, as well as all notes or reports generated therefrom. R.M.C. 701 (c), (e); M.C.R.E. 304.

18. Please produce all documents or information regarding any mistreatment of the Accused at the hands of U.S. or Allied Armed Forces, civilians or contractors of which the government is aware. For purposes of this discovery request, 'mistreatment' includes the use of any "special interrogation plan," "harsh interrogation techniques" or other methods of interrogation. This includes any recorded allegation of such mistreatment made by the accused, any witness to the mistreatment, or any non-governmental organization (e.g., the International Committee for the Red Cross) that purports to document allegations of mistreatment. M.C.R.E. 304, R.M.C. 701(c)

19. Please produce all interrogation manuals, directives, instructions and other policy guidance issued by any agency involved in any aspect of the detention and interrogation of the Accused or of any other witness in the case, including individuals whose statements the government provides to the defense through discovery. R.M.C. 701(b), (c), (e); M.C.R.E. 304.

20. Please produce all evidence affecting the credibility of any government witness, or that of individuals who interviewed or interrogated the Accused or any other accused, including but not limited to:

a. Prior civilian and court-martial conviction and all arrests or apprehension of any such persons. In complying with this discovery request, the defense requests the government check with the National Crime Information Center (NCIC), National Records Center (NRC), and all local military criminal investigatory organizations for each witness. *United States v. Jenkins*, 18 M.J. 583, 584-585 (A.C.M.R 1984); R.M.C. 701(c); M.C.R.E. 608, 609

b. Records of nonjudicial punishment, or adverse administrative actions (pending and

completed), whether filed in official files or local unit files including, but not limited to, discharge prior to expiration of term of service for any reason, relief for cause actions, letters or reprimand or admonition and negative counseling relating to adverse or disciplinary actions concerning any such persons. R.M.C. 701(c); M.C.R.E. 608

c. All investigations of any type or description, pending initiation, ongoing or recently completed, that pertain to alleged misconduct of any type or description committed by any such persons. *United States v. Stone*, 40 MJ. 420 (C.M.A. 1994); R.M.C. 701(c); M.C.R.E. 608

d. All evidence in control of or known to the government concerning the mental status of any such persons. *United States v. Green*, 37 MJ. 88 (C.M.A. 1993). Material sought includes, but is not limited to, medical records reflecting psychiatric diagnosis or treatment or head injury of any type and drug and/or alcohol addiction diagnosis or rehabilitation records. *United States v. Brakefield*, 43 C.M.R. 828 (A.C.M.R 1971); *United States v. Brickey*, 8 M.J. 757 (A.C.M.R 1980) affirmed 16 M.J. 258 (C.M.A. 1983); *United States v. Eschalomi*, 23 M.J. 12 (C.M.A. 1985); R.M.C. 701(c)(2), 706.

e. A copy of the Official Military Personnel File (OMPF) of any such persons R.M.C.701(c)(1).

f. Copies of the official civilian personnel file of any such persons. R.M.C.701(c), (e)

g. The results of any polygraph examinations, conducted on any such persons, including the Polygraph Examiner Report and related polygraph records, the Polygraph Consent Form, the Polygraph Examination Authorization Request, the Polygraph Examination Quality Control Review and any rights certificate executed by the examiner and the subject. *United States v. Mougenel*, 6 M.J. 589 (A.F.C.M.R 1978); *United States v. Simmons*, 38 M.J. 376 (C.M.A.1993); R.M.C. 701(c).

h. The contents of all CITE accreditation files for all CITE investigators who have participated in investigations relating to this case, and similar such files for agents of any other government agency who have participated in investigations relating to this case. R.M.C.701(c), (e).

21. Please produce all documents related to any polygraph examination administered to the Accused including any reports generated as result of the examination and any related polygraph records.

22. Please produce all documents related to investigations into the conduct of U.S. government employees or civilian contractors performing interrogations following the events of September 11, 2001, including but not limited to the Church Report, the Schmidt-Furlow Report, and reports by the International Committee for the Red Cross.

23. To the extent not otherwise produced, please produce all documents and materials related to the questioning or interrogation of the Accused while detained at Guantanamo or elsewhere including the Standard Operating Procedures (SOPs) for such questioning or interrogation as well as any recordings of any type of this questioning or interrogation.

24. Please identify all people currently held by the United States who are believed to be members of al-Qaeda, along with their current location and a way to contact them. Also, please indicate whether you will make these individuals available for an interview. In addition, please list the names of all unnamed co-conspirators in the present case known to the government, including but not limited to members of al-Qaeda.

25. Please produce the written outlines or reports of all pending and potential detainee cases including the High Value Detainee cases prepared by trial counsel including Colonel Britt in response to a request for such outlines or reports by Brigadier General Hartmann in 2007 after he became the Legal Advisor to the Convening Authority.

26. Please produce all documents relating to the death of all detainees held in U.S. custody at Bagram Air Base, Afghanistan, Guantanamo or any so called "black site" utilized by the United States including the C.I.A. following the events of September 11, 2001. This includes but is not limited to documents related to the investigation of these deaths.

27. Please produce any documents that are believed to constitute al-Qaeda training manuals/materials held by the U.S. Government, including but not limited to the Manchester document.

28. Please produce all interrogation logs for all detainees at Guantanamo, both currently held and released, whose testimony will be used against the Accused, or any other accused.

29. Please produce a copy of the so called trial guide to be used in any prospective commission proceedings.

30. Please produce all information, written or otherwise, which was used (or will be used) by the Appointing Authority and/or Convening Authority and the various advisory personnel in nominating prospective, and in selecting final, commission members, including but not limited to staff summary sheets and the like, and the purpose for any amending orders, specifying in particular the reason for removing any previously selected commission member.

31. Please produce an official copy or copies of the SOUTHCOM Human Rights Policies and Procedures manual (SC Regulation 1-20), including any revisions, from the time the Accused was transferred to Guantanamo through the present.

32. Please produce a Bill of Particulars detailing the particular acts and offenses alleged by the charge sheet.

33. Please produce any evidence in the possession of the Government which reasonably may tend to negate or reduce the guilt or punishment of the Accused or any other accused.

34. Please state whether any eavesdropping, wiretapping, electronic recording, electronic monitoring, electronic interception, electronic, data mining electronic or audio enhancement devices were used in any fashion in connection with the investigation and the capture of the Accused or any other accused. If so, state the date, time, and place when such instruments were used and provide counsel copies of any authorizing warrants, if any, and the results of all such activity.

35. To the extent not already identified or produced, please state whether any informants were utilized at any stage of the investigation of this case. If so, provide the name, telephone number and address of said informants and the role which said informants played in the investigation.

36. Please provide all results or reports of physical or mental examinations and scientific tests or experiments, or copies thereof, which are material to the preparation of the defense, including any sentencing proceeding, or are intended for use by trial counsel as evidence in chief at the trial.

37. To the extent not already produced, please produce for inspection and copying all books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof which are in the possession, custody or control of the government, and which are material to the preparation of the defense, including any sentencing proceeding, or are intended for use by trial counsel as evidence in chief at the trial, or were obtained from or belonged to the Accused, or any other accused.

38. Please provide a copy of the prior criminal record of each of the government's witnesses, if any.

39. Please provide copies of all reports or memoranda relating to the inception and conduct of the investigation of the Accused or other accused prior to or after the events of September 11, 2001. This request contemplates any reports or memoranda presently within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to trial counsel.

40. Please produce all evidence which would be exculpatory, or inconsistent with statements made by the Accused during the Combatant Status Review Tribunal (CSRT) proceedings or during any interrogation or interview of the Accused by the government or its

agents.

41. Please identify any evidence in this case which the government has intentionally or inadvertently destroyed, or for whatever cause, no longer has within its possession, and describe the circumstances surrounding this destruction.

42. Please provide all documents including any policies or instructions concerning the destruction of notes by interrogators or investigators involved in the questioning of the Accused or any other accused.

43. Please produce any evidence, information, testimony, transcripts, or statements indicating that any prospective prosecution witness on any occasion has given false, misleading or contradictory information regarding the charges at bar or any other matter to any persons, including those involved in law enforcement and their agents or informers.

44. Please produce any evidence, information, testimony, transcripts, or statements indicating that opinion, reputation or specific acts show that any government witness is not a truthful person or is a threatening, aggressive, or assaultive person.


45. Please produce any evidence, information testimony, transcripts, or statements indicating that any prospective prosecution witness has given a statement which contradicts that of another potential prosecution witness.

46. Please identify the existence and substance of any deals or understandings entered into between any law enforcement agency and any prospective witness in this case.

47. Please produce any evidence, information, testimony, transcripts, or statements indicating that any witness is biased or prejudiced regarding the Accused or any other accused in this case in any way. *United States v. Bagley*, 473 U.S. 667 (1985).

40. Please produce any evidence of "[o]ther crimes, wrongs, or acts," M.C.R.Evid., Rule 404(b), of the Accused or any other accused that the government intends to introduce at trial or sentencing in this case.

41. Please produce all documents and materials related to the interrogation, interviewing, or confinement of the Accused by the United States, including but not limited to the CIA or any private contractors, during which techniques were used which have been described by the government as waterboarding or "enhanced interrogation techniques." In addition, please produce all other documents and material related to the interrogation, interviewing or confinement of the Accused utilizing any other technique or method. In requesting these materials, trial counsel is reminded of the numerous public sources confirming this including statements by CIA director, Michael Hayden to the United States Congress as well as [REDACTED]



42. If any material relating to the preceding request has intentionally or inadvertently been destroyed, lost, or for whatever cause, the government no longer has it within its possession, please identify the material and describe the circumstances surrounding this destruction or loss.

43. Please produce all documents and materials related to the interrogation, interviewing, or confinement of any other accused by the United States, including but not limited to the CIA or any private contractors, during which techniques were used which have been described by the government as waterboarding or "enhanced interrogation techniques." In addition, please produce all other documents and material related to the interrogation, interviewing or confinement of any other accused utilizing any other technique or method.

44. If any material relating to the preceding request has intentionally or inadvertently been destroyed, lost, or for whatever cause, the government no longer has it within its possession, please identify the material and describe the circumstances surrounding this destruction or loss.

45. Please state whether trial counsel, representatives of the Office of Military Commissions, the Department of Justice, the FBI or any other member of the prosecution or investigative team are able to view Commission courtroom proceedings in Guantanamo in progress while such person or persons are at their offices inside the continental United States. If so, please describe the video or other system utilized to view the courtroom proceedings and the specific government offices equipped to watch such proceeding in the United States. Also, please produce all documents related to this system.

46. Please produce all recordings, including audio and video recordings of the Accused and the other accused while inside the Military Commission courtroom including for the proceedings which occurred on 5 June 2008. Also, please produce a copy of any transcript obtained or prepared in connection with these recordings or proceedings. In connection with this request, we seek all recordings of the Accused or the other accused whether the military judge was present inside the Courtroom or not.

47. Please produce all recordings, including audio and video recordings, and transcripts that relate to the Combatant Status Review Tribunal (CSRT) of the Accused and the other accused.

48. Please state whether the United States including the Department of Defense or any government agency or agency has monitored or recorded any meetings between the Accused

and detailed military counsel or civilian counsel including CAPT Prescott Prince, LTC Michael Acuff, David Nevin and Scott McKay. If so, please state the dates and times when such monitoring or recording occurred, the purpose of the monitoring or recording, the authority for this monitoring or recording and identify all person that participated in, watched or listened to this monitoring or recording. Also, please produce any notes and recordings, including audio and video recordings, and transcripts, related to this monitoring and recording.

49. Please produce the "Reason to Believe" ("RTB) packet submitted to the President of the United States or any other government official related to the Accused or any other accused. Also, please produce the documents, if any, confirming the President or any government official authorized the present prosecution of the Accused.

50. Please produce all documents related to the capture, arrest, custody, interviewing, interrogation or any other treatment of the children of the Accused by the U.S. government, U.S. government agents, civilian contractors or any foreign agent or country. Trial counsel is reminded that various public sources have reported that interrogators abused the young children of the Accused and referred to the Affidavit of Majid Kahn released on April 16, 2006 confirming this abuse.

51. Please produce all photographs, videotapes or visual depictions of any kind of the Accused including any surveillance photos or photographs taken following his capture or while in custody.

52. Please produce all documents related to Zacarias Moussaoui including all discovery produced to the defense during the federal prosecution of Mr. Moussaoui in the United States District Court for the Eastern District of Virginia following the events of September 11, 2001.

53. Please produce all documents related to Ramzi Yousef including all discovery produced to the defense during the federal prosecution of Mr. Yousef in the United States District Court for the Southern District of New York following the 1993 World Trade Center Bombing.

54. Please produce all documents, without limitation, related to the investigation by the United States into the events of September 11, 2001, al Qaeda and Osama bin Laden.

55. Please produce all evidence that the United States provided military training or any other form of assistance, either directly or indirectly, to individuals or groups within Afghanistan resisting the Russian occupation of these areas. By way of example, trial counsel is directed to the Stipulation entered into by the United States for use at trial in the case of *United States v. Usama Bin Laden*, Case No. S(7) 98 Cr. 1023 LBS, United States District Court for the Southern District of New York, confirming that as early as 1979 and continuing until 1991, the United States provided "economic and military support to the Afghan

mujahedeen through a third country intermediary" and that such support beginning in 1987 "included Stinger antiaircraft missiles."

56. Please produce all documents or other materials that may mitigate the punishment in this case or lead to materials that would mitigate the punishment. *See Brady v. Maryland*, 383 U.S. 83, 87 (1963) (prescribing the prosecutor's affirmative obligation to disclose evidence material "either to guilt or to punishment"); and *see also*, R.M.C. 701 (e) (3). The Supreme Court has spoken of relevant mitigating evidence "in the most expansive terms." *Tennard v. Dretke*, 542 U.S. 274 (2004). "Relevant mitigating evidence is evidence which tends logically to prove or disprove some fact or circumstance which a fact-finder could reasonably deem to have mitigating value." *McKoy v. North Carolina*, 494 U.S. 433, 440 (1990) (internal quotations omitted). While relevant mitigation logically entails aspects of a defendant's conduct as it pertains to circumstances of the offense, *Lockett v. Ohio*, 438 U.S. 586, 604 (1978)(plurality opinion) (Berger, C.J.), it also includes conduct and characteristics of the defendants unrelated to the crime. *Skipper v. South Carolina*, 476 U.S. 1, 7 (1986); and *Tennard*, 542 U.S. at 287-88. Mitigating evidence, includes, but is not limited, to the following:

- a. The accused acted under duress or under the domination of another person.
- b. The accused's capacity to appreciate the criminality of his conduct or to conform to his conduct to the requirements of law was substantially impaired.
- d. The accused's capacity for rehabilitation. *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982).
- e. The accused's disposition to make a well-behaved and peaceful adjustment to life in confinement. *Skipper v. South Carolina*, 476 U.S. 1, 7 (1986).
- f. The conditions under which the Accused was confined from the time of his apprehension to present.
- g. Any other evidence of the circumstances of the crime or the character and record of any party to the crime that would tend to show that another party was more culpable, more dominant or more dangerous than the defendant.

Conclusion

The foregoing are requested on the grounds that the Accused cannot prepare necessary motions, analyze the charges filed against him, conduct an appropriate investigation and properly prepare for the trial of this matter, including any sentencing proceeding, without production of the documents, items and information requested. The disclosure of the items requested is paramount to ensure a "full and fair trial" as mandated by the Military

Commissions Act of 2006 and to afford the Accused all the judicial guarantees which are recognized as indispensable by civilized people as mandated in the Manual for Military Commissions as well as well established principles under the United States Constitution, death penalty jurisprudence and international law.

DATED this 2nd day of July, 2008.

By:

Khalid Sheik Mohammed, proceeding *Pro Se*

and

/s/ Prescott L. Prince
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Michael L. Acuff, LTC, JA, USAR
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BY: /s/ Brian Mizer
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Attachment B



OFFICE OF THE
CHIEF PROSECUTOR

**DEPARTMENT OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600**

18 September 2008

TO: KHALID SHEIK MOHAMMED

FROM: Prosecution Team, United States v. Mohammed, et al.

SUBJECT: Prosecution response to defense Request for Discovery
- U.S. v. MOHAMMED, et al., dated 2 July 2008.

Below please find the Prosecution response to your requests. The Prosecution response will be in bold and italicized following each of your requests.

1. Khalid Sheikh Mohammed, proceeding *pro se*, and through his stand-by counsel, acting at the request and direction of Mr. Mohammed, requests that Trial Counsel disclose, produce and make available for copying to him, and his stand by counsel, the following items and information, whether currently in the possession, custody, control or knowledge of Trial Counsel, the Department of Defense, or any law enforcement or intelligence agent or agency of the United States, or which by the exercise of due diligence may become known to trial counsel.¹ Trial counsel, which includes attorneys from the United States Department of Justice, are reminded of their obligation and duty to search for relevant materials and information in the possession of other government agents and agencies and to ensure that such evidence is preserved and not otherwise destroyed (see, e.g., *Kyles v. Whitley*, 514 U.S. 419 (1995)).

2. Mr. Mohammed further requests that the requested items and information be translated and provided to him in Arabic, his native language, so he may meaningfully review these materials. YOUR REQUEST TO TRANSLATE ALL DOCUMENTS FROM ENGLISH INTO ARABIC IS DENIED. MR. MOHAMMED HAS TRANSLATOR/LINGUIST ASSETS AVAILABLE TO ASSIST HIM IN REVIEWING DISCOVERY MATERIALS.

¹ This request for discovery is joined by Ali Abdul Aziz Ali (a/k/a Ammar Al Baluchi), with the express consent of Mr. Ali, through his detailed defense counsel. Mr. Aziz Ali will also file a supplemental request for documents that are specific to his case.

3. This Request for Discovery is made pursuant to the Rules for Military Commissions including Rules 701 and 703, the United States Constitution, including the Fifth, Sixth and Eighth Amendments thereto, accepted principles of death penalty jurisprudence and international law, and other applicable authority cited herein.

Discovery Requests

1. Please produce all handwritten, typed, or recorded statements by Mr. Mohammed (hereinafter "the Accused"), or any other accused² or potential witness in connection with the investigation of this case. This includes but is not limited to summaries of conversations with representatives or agents of the U.S. Government including private contractors and representatives or agents of any foreign government or agency. Additionally, please produce a signed statement from the responsible counsel or official from each concerned intelligence or law enforcement agency of the United States including, but not limited to, the Defense Intelligence Agency (DIA), Central Intelligence Agency (CIA), Federal Bureau of Investigations (FBI), and Naval Criminal Investigative Service (NCIS), and the Department of Defense (DOD), indicating that all potentially relevant existing documents have been provided and/or if a document has been withheld identifying the document, its location, and the reasons for withholding.

ALL STATEMENTS RELEVANT AND MATERIAL TO THE CHARGED OFFENSES WILL BE PROVIDED

2. Please produce any writing or document used by a witness to prepare for trial.

THE PROSECUTION UNDERSTANDS ITS OBLIGATIONS

3. Please identify all Government and private investigators, interrogators, translators, and informants, if any, who participated in, are presently participating in, or will participate in, the investigation of this case.

PERIOD

4. Please produce all personal or business notes, including rough notes, memoranda, and writings prepared by investigators or intelligence agents, which are not furnished pursuant to any other provisions of this request, which directly or indirectly mention or pertain to the Accused, any other accused, or any

² The other accused, as this phrase is used herein, is intended to refer to the other named accused in this case which are listed on the Charge Sheet as Walid Muhammad Salih Mubarek Bin 'Attash, Ramzi Binalshibh, Ali Abdul Aziz Ali and Mustafa Ahmed Adam al Hawsawi.

government witnesses or which is otherwise relevant to this case.
This includes, but is not limited to, the following:

a. Any statements or reports which may later become discoverable under the Jencks Act, 18 U.S.C. 3500;

THE PROSECUTION UNDERSTANDS ITS OBLIGATION.

b. Internal data pages;

DENIED

c. Interview logs and logs of all visitors of the Accused, or any other accused, while detained at Guantanamo Bay, Cuba or elsewhere following their arrest or capture; and

DENIED

d. Informants' notes.

DENIED

5. Please produce all documents including email relating or referring to the Accused, or any other accused, which was used by any agency or agent of the United States to communicate with any foreign country, foreign agency, foreign agent, foreign investigator, or other agent, investigator or agency of the United States.

DENIED

6. Please identify and produce for inspection and copying all evidence or property seized from the Accused, or believed to be owned by the Accused, including all evidence that Trial Counsel intends to offer into evidence against the Accused or any other accused in its case in chief and/or sentencing case, including any potential rebuttal case. Also, please produce any documents or reports related to this evidence or property. This includes but is not limited to a computer hard drive reported in the unclassified CSRT proceedings of the Accused to have been seized during his capture and any reports generated in connection with the review and analysis of the contents of this computer.

THOSE MATERIALS WE INTEND TO USE AT TRIAL WILL BE PROVIDED.

THOSE MATERIALS WE INTEND TO USE FROM THE COMPUTER HARD DRIVE WILL BE PROVIDED

7. Please identify and produce for inspection and copying all evidence or property seized from any other accused, or believed to be owned by any other Accused, including all evidence that Trial Counsel intends to offer into evidence against the Accused or other accused in its case in chief and/or sentencing case, including any potential rebuttal case. Also, please produce any documents or reports related to this evidence or property.

THE PROSECUTION WILL PROVIDE YOU WITH ALL RELEVANT AND MATERIAL EVIDENCE INCLUDING ALL THAT WE INTEND TO USE AT TRIAL.

8. Please produce all records relating to the Accused's confinement, including but not limited to: visitor logs; disciplinary records; Standards of Conduct/Standard Operating Procedures (SOPs) for guards during all periods during which the Accused has been confined; records/memoranda prepared by the U.S. Government concerning the Accused; interrogations conducted while he was in the custody of the U.S. Government (including the CIA) or held in custody on the behalf or benefit of the U.S. Government, including notes and plans for interrogations; list of interrogation techniques authorized for use while the Accused was confined; and involvement of the Behavioral Science Consultation Teams (BSCTs) in the planning and execution of interrogation sessions.

STATEMENTS OF THE ACCUSED THAT ARE RELEVANT AND MATERIAL TO THE CHARGED OFFENSES WILL BE PROVIDED. SOPs WILL NOT BE PROVIDED. THE JTF BSCT TEAMS WERE NOT INVOLVED. THE ACCUSED IS DEAD.

9. Please produce all documents, including transcripts and recordings, which refer or relate to offers of immunity, or other consideration, made by the Government to others involved in this case in any respect in exchange for cooperation or testimony. If no document exists describing this immunity or other consideration, please describe in detail the offer of immunity or other consideration given and all the circumstances of the cooperation or testimony.

a. The foregoing request is intended to encompass all records, reports, or memoranda of federal investigative or intelligence agencies, foreign governments or their agencies and state and local law enforcement agencies, which describe, refer to, or otherwise comment upon their relationship with any informant involved in this case. This request includes, but is not limited to, records, reports, or memoranda which indicate the statements made by the informant to other persons, including law enforcement agents, as well as motives and reasons for the informant's cooperation with the government, i.e., whether the informant was paid for his services, whether promises were made to the informant in exchange for his services, or whether any action was taken by the government which would be beneficial to the informant in exchange for his services. This request also includes any rough notes used to prepare the above-mentioned records, reports, or memoranda. This request is also intended to include, but is not limited to the "Tiger Team Standard Operating Procedure (SOP) for the JTF GTMO Joint Intelligence Group (JIG) Interrogation Control Element".

b. This request contemplates any records, reports, or memoranda presently within the possession, custody or control of the government, the existence of which is known,

or by the exercise of due diligence may become known, to the attorney for the government. *Roviaro v. United States*, 353 U.S. 53 (1957); United States Constitution, Amendment VI. THE PROSECUTION WILL COMPLY WITH ITS OBLIGATIONS UNDER THE APPLICABLE RULES.

10. Please produce all documents referring or related to the capture of the Accused which has publicly been reported to have occurred on or about March, 1 2003, in Pakistan and the involvement of the U.S., its agents, or foreign agents in the capture, detention and transfer of the Accused from Pakistan to elsewhere. Please also produce:

a. the names, current phone numbers, e-mail addresses and physical address of all [REDACTED] personnel [REDACTED]

[REDACTED] involved in the capture and detention of the Accused and the period of each person's involvement; and

DENIED

b. the names, current phone numbers, e-mail addresses and physical address of all [REDACTED] personnel [REDACTED]

[REDACTED] involved in the decision to transfer and the transfer of the Accused into U.S. custody and the period and extent of each person's involvement; and

DENIED

c. any photographs, audiotapes, videotapes, or other recordings obtained in conjunction with the capture or detention of the Accused;

DENIED

11. Please produce all evidence in control of or known to the government concerning the physical or mental health of the Accused. See generally, *United States v. Green*, 37 MJ. 88 (C.M.A. 1993). Material sought includes, but is not limited to, medical records reflecting mental health diagnosis, medical treatment or injury of any type. *United States v. Brakefield*, 43 C.M.R. 828 (A.C.M.R. 1971); *United States v. Brickey*, 8 M.J. 757 (A.C.M.R. 1980) affirmed 16 M.J. 258 (C.M.A. 1983); *United States v. Eschalomi*, 23 M.J. 12 (C.M.A. 1985); R.M.C. 701(c)(2), 706. DENIED: YOU FAIL TO DEMONSTRATE HOW THESE ARE MATERIAL TO THE PREPARATION OF THE DEFENSE. RFE 701(c)(2)

12. Please produce any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, that are within the possession, custody, or control of the government at any level, the existence of which is known, or by the exercise of due diligence may become known, to the trial

counsel, and which are material to the preparation of the defense, including any sentencing proceeding, or are intended for use by the trial counsel as evidence in the prosecution case in chief at trial. R.M.C. 701(c)(2). This specifically includes, but is not limited to:

a. Copies of the records of any and all medical screenings, physicals, examinations, mental health evaluations, as well as notes prepared by any treating physician, physician's assistant, medic, psychiatrist, psychologist, chaplain, religious advisor, counselor, or other person who has examined the mental or physical condition of the Accused at any time since he entered the custody of the United States (whether or not that custody was transferred at some time), including, but not limited to, all files on the accused created or kept by any "Behavioral Sciences Team" involved with the accused.

DENIES YOU FAIL TO DEMONSTRATE HOW THESE ARE MATERIAL TO THE PREPARATION OF THE DEFENSE. SEE 10/11/12

b. The Accused does not authorize the government to review or examine any such reports, notes, or other documents that may be covered by M.C.R.E. 503 or 513, by M.C.R.E. 302, or by common-law privileges and privacy interests with respect to medical treatment. The Accused does, however, request that the government order any such material turned over to the Accused and provide contact information for any person who obtained or created such reports or other material.

NOTED

13. Please produce any and all records containing information pertaining to the Accused's physical or mental condition. This request includes, but is not limited to, medical records held at Guantanamo Naval Base, as well as records in the possession of any (United States or other) government agency that had contact with the Accused since his detention or apprehension on or about March 1, 2003.

DENIES YOU FAIL TO DEMONSTRATE HOW THESE ARE MATERIAL TO THE PREPARATION OF THE DEFENSE. SEE 10/11/12

14. Please produce all records relating to alleged, suspected, investigated, substantiated or actual incidents of ill-treatment of prisoners held in or interrogated at Guantanamo Bay Naval Base and any other detention facility where the accused was held or interrogated since his apprehension, including but not limited to (R.M.C. 701 (c), (e); M.C.R.E. 304):

a. Records relating to any person who was ever accused of, investigated for, or charged with ill-treatment of a detainee at Guantanamo Bay Naval Base, and any other facility where the accused was held or interrogated; and

b. Records relating to any prisoner at Guantanamo Bay Naval Base, and any other facility where the accused was held or interrogated, who made an allegation of ill-treatment or who was otherwise involved in an investigation of ill-treatment at any time, including but not limited to all co-accuseds in the instant case, as well as Mr. Jawad, Mr. Al Qahatani, Mr. Manadel al-Jamadi, other specific individuals known from media reports or other sources to have been abused at any facility where the Accused was held or interrogated.

YOUR REQUEST FOR THIS INFORMATION IS DENIED. ALLEGATIONS MADE BY OTHER DETAINEES ARE IRRELEVANT TO THE ACCUSED AND THE CHARGED OFFENSES.

15. Please produce all records relating to interrogation methods permitted or used at Guantanamo Bay Naval Base or any other facility where the Accused has been held or interrogated, including but not limited to (R.M.C. 701 (c), (e); M.C.R.E. 304):

a. Records, logs, notes relating to interrogation methods applied on the accused;

DENIED

b. Records, logs, notes relating to interrogation methods applied on Abu Zubayda and Abd al-Rahim al-Nashiri;

DENIED

c. Policies, practices, guidelines, Standard Operating Procedures, Rules of Engagement or other guidance relating to interrogation methods permitted or used at Guantanamo Bay Naval Base and at any other facility where the Accused has been held or interrogated; and .

DENIED

d. Copies of any and all video-taped forcible removal of the Accused from any location.

DENIED

16. Please provide the name and contact information, as well as personnel records of, any person involved in the detention and/or interrogation of the accused at Guantanamo Bay Naval Base, or at any other facility where the accused was held or interrogated. R.M.C. 701 (c), (e); R.M.C. 703; M.C.R.E. 304.

DENIED

17. To the extent not otherwise produced, please provide the name and contact information, as well as personnel records, of every person who interrogated, questioned or met with the Accused following the detailing of military defense counsel on his behalf, the date of any such interrogation, questioning or meeting, the results of such meeting, as well as all notes or reports generated therefrom. R.M.C. 701 (c), (e); M.C.R.E. 304. THE PROSECUTION IS NOT AWARE OF ANYONE WHO MET WITH YOUR CLIENT IN A LAW ENFORCEMENT/INTELLIGENCE CAPACITY AFTER MILITARY DEFENSE COUNSEL WAS DETAILED TO THE CASE

18. Please produce all documents or information regarding any mistreatment of the Accused at the hands of U.S. or Allied Armed Forces, civilians or contractors of which the government is aware. For purposes of this discovery request, 'mistreatment' includes the use of any "special interrogation plan," "harsh interrogation techniques" or other methods of interrogation. This includes any recorded allegation of such mistreatment made by the accused, any witness to the mistreatment, or any non-governmental organization (e.g., the International Committee for the Red Cross) that purports to document allegations of mistreatment. M.C.R.E. 304, R.M.C. 701(e)

DENIED

19. Please produce all interrogation manuals, directives, instructions and other policy guidance issued by any agency involved in any aspect of the detention and interrogation of the Accused or of any other witness in the case, including individuals whose statements the government provides to the defense through discovery. R.M.C. 701(b), (c), (e); M.C.R.E. 304.

DISCOVERED

20. Please produce all evidence affecting the credibility of any government witness, or that of individuals who interviewed or interrogated the Accused or any other accused, including but not limited to;

a. Prior civilian and court-martial conviction and all arrests or apprehension of any such persons. In complying with this discovery request, the defense requests the government check with the National Crime Information Center (NCIC), National Records Center (NRC), and all local military criminal investigatory organizations for each witness. *United States v. Jenkins*, 18 M.J. 583, 584-585 (A.C.M.R 1984); R.M.C. 701(c); M.C.R.E. 608, 609

b. Records of nonjudicial punishment, or adverse administrative actions (pending and completed), whether filed in official files or local unit files including, but

not limited to, discharge prior to expiration of term of service for any reason, relief for cause actions, letters or reprimand or admonition and negative counseling relating to adverse or disciplinary actions concerning any such persons.

R.M.C. 701(c); M.C.R.E. 608

c. All investigations of any type or description, pending initiation, ongoing or recently completed, that pertain to alleged misconduct of any type or description committed by any such persons. *United States v. Stone*, 40 MJ. 420 (C.M.A. 1994); R.M.C. 701(c); M.C.R.E. 608

d. All evidence in control of or known to the government concerning the mental status of any such persons. *United States v. Green*, 37 MJ. 88 (C.M.A. 1993). Material sought includes, but is not limited to, medical records reflecting psychiatric diagnosis or treatment or head injury of any type and drug and/or alcohol addiction diagnosis or rehabilitation records. *United States v. Brakefield*, 43 C.M.R. 828 (A.C.M.R 1971); *United States v. Brickey*, 8 M.J. 757 (A.C.M.R 1980) affirmed 16 M.J. 258 (C.M.A. 1983); *United States v. Eschalomi*, 23 M.J. 12 (C.M.A 1985); R.M.C. 701(c)(2), 706.

e. A copy of the Official Military Personnel File (OMPF) of any such persons R.M.C.701(c)(1).

f. Copies of the official civilian personnel file of any such persons. R.M.C.701(c), (e)

g. The results of any polygraph examinations, conducted on any such persons, including the Polygraph Examiner Report and related polygraph records, the Polygraph Consent Form, the Polygraph Examination Authorization Request, the Polygraph Examination Quality Control Review and any rights certificate executed by the examiner and the subject. *United States v. Mouguel*, 6 M.J. 589 (A.F.C.M.R 1978); *United States v. Simmons*, 38 M.J. 376 (C.M.A.1993); R.M.C. 701(c).

h. The contents of all CITF accreditation files for all CITF investigators who have participated in investigations relating to this case, and similar such files for agents of any other government agency who have participated in investigations relating to this case. R.M.C.701(c), (e).

THE PROSECUTION UNDERSTANDS ITS OBLIGATION SET OUT IN RULE 16 OF THE FEDERAL RULES

21. Please produce all documents related to any polygraph examination administered to the Accused including any reports generated as result of the examination and any related polygraph records.

THE REQUEST FOR DOCUMENTS EXIST AND ARE RELEVANT AND MATERIAL TO THE ABOVE REQUESTS. THEY WILL BE PRODUCED.

22. Please produce all documents related to investigations into the conduct of U.S. government employees or civilian contractors performing interrogations following the events of September 11, 2001, including but not limited to the Church Report, the Schmidt-Furlow Report, and reports by the International Committee for the Red Cross.

DENIED. NOT RELEVANT

23. To the extent not otherwise produced, please produce all documents and materials related to the questioning or interrogation of the Accused while detained at Guantanamo or elsewhere including the Standard Operating Procedures (SOPs) for such questioning or interrogation as well as any recordings of any type of this questioning or interrogation.

ALL STATEMENTS OF THE ACCUSED REGARDING THE CHARGED OFFENSES WILL BE FILED. YOUR REQUEST FOR SOP'S IS DENIED.

24. Please identify all people currently held by the United States who are believed to be members of al-Qaeda, along with their current location and a way to contact them. Also, please indicate whether you will make these individuals available for an interview. In addition, please list the names of all unnamed co-conspirators in the present case known to the government, including but not limited to members of al-Qaeda.

DENIED

25. Please produce the written outlines or reports of all pending and potential detainee cases including the High Value Detainee cases prepared by trial counsel including Colonel Britt in response to a request for such outlines or reports by Brigadier General Hartmann in 2007 after he became the Legal Advisor to the Convening Authority.

DENIED

26. Please produce all documents relating to the death of all detainees held in U.S. custody at Bagram Air Base, Afghanistan, Guantanamo or any so called "black site" utilized by the United States including the C.I.A. following the events of September 11, 2001. This includes but is not limited to documents related to the investigation of these deaths.

DENIED. NOT RELEVANT

27. Please produce any documents that are believed to constitute al-Qaeda training manuals/materials held by the U.S. Government, including but not limited to the Manchester document.
ALL RELEVANT AND MATERIAL DOCUMENTS THE PROSECUTION INTENDS TO USE AT TRIAL WILL BE PROVIDED.

28. Please produce all interrogation logs for all detainees at Guantanamo, both currently held and released, whose testimony will be used against the Accused, or any other accused.
DENIED. THE PROSECUTION UNDERSTANDS ITS OBLIGATIONS AS THEY RELATE TO EVIDENCE.

29. Please produce a copy of the so called trial guide to be used in any prospective commission proceedings.
THIS REQUEST SHOULD BE ADDRESSED TO THE MILITARY JUDGE.

30. Please produce all information, written or otherwise, which was used (or will be used) by the Appointing Authority and/or Convening Authority and the various advisory personnel in nominating prospective, and in selecting final, commission members, including but not limited to staff summary sheets and the like, and the purpose for any amending orders, specifying in particular the reason for removing any previously selected commission member.
ALL MATTERS USED BY THE CONVENING AUTHORITY IN THE SELECTION OF MEMBERS IN THIS CASE WILL BE PROVIDED.

31. Please produce an official copy or copies of the SOUTHCOM Human Rights Policies and Procedures manual (SC Regulation 1-20), including any revisions, from the time the Accused was transferred to Guantanamo through the present.

32. Please produce a Bill of Particulars detailing the particular acts and offenses alleged by the charge sheet.
THERE ARE 169 COUNTS ALLEGED WITH SUFFICIENCY. YOUR REQUEST FOR AN ADDITIONAL BILL OF PARTICULARS IS DENIED.

33. Please produce any evidence in the possession of the Government which reasonably may tend to negate or reduce the guilt or punishment of the Accused or any other accused.
THE PROSECUTION UNDERSTANDS ITS OBLIGATIONS.

34. Please state whether any eavesdropping, wiretapping, electronic recording, electronic monitoring, electronic interception, electronic, data mining electronic or audio enhancement devices were used in any fashion in connection with the investigation and the capture of the Accused or any other

accused. If so, state the date, time, and place when such instruments were used and provide counsel copies of any authorizing warrants, if any, and the results of all such activity.

AS TO SPECIFICS OF THE ACCUSED'S CAPTURE, DENIED AS NOT RELEVANT. TO THE EXTENT ANY OTHER HEREIN REQUESTED MATERIALS EXIST, ARE RELEVANT AND MATERIAL AND THE PROSECUTION INTENDS TO USE THEM AT TRIAL, THEY WILL BE PROVIDED.

35. To the extent not already identified or produced, please state whether any informants were utilized at any stage of the investigation of this case. If so, provide the name, telephone number and address of said informants and the role which said informants played in the investigation.

AND SUCH NAMES WILL BE PROVIDED IF PROSECUTION INTENDS TO CALL THEM IN EXAMINATION.

36. Please provide all results or reports of physical or mental examinations and scientific tests or experiments, or copies thereof, which are material to the preparation of the defense, including any sentencing proceeding, or are intended for use by trial counsel as evidence in chief at the trial.

REMANDANT - SENT QUESTION 12.

37. To the extent not already produced, please produce for inspection and copying all books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof which are in the possession, custody or control of the government, and which are material to the preparation of the defense, including any sentencing proceeding, or are intended for use by trial counsel as evidence in chief at the trial, or were obtained from or belonged to the Accused, or any other accused.

ALL RELEVANT AND MATERIAL DOCUMENTS THE PROSECUTION INTENDS TO USE AT TRIAL WILL BE PROVIDED.

38. Please provide a copy of the prior criminal record of each of the government's witnesses, if any.

THE PROSECUTION UNDERSTANDS OUR OBLIGATION.

39. Please provide copies of all reports or memoranda relating to the inception and conduct of the investigation of the Accused or other accused prior to or after the events of September 11, 2001. This request contemplates any reports or memoranda presently within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to trial counsel.

THOSE MATERIALS RELEVANT AND MATERIAL WILL BE OR HAVE BEEN PROVIDED.

40. Please produce all evidence which would be exculpatory, or inconsistent with statements made by the Accused during the Combatant Status Review Tribunal (CSRT) proceedings or during any interrogation or interview of the Accused by the government or its agents.

THE PROSECUTION WILL PROVIDE ALL STATEMENTS RELEVANT AND MATERIAL TO THE CHARGED OFFENSES, AND THOSE THAT ARE EXCULPATORY.

41. Please identify any evidence in this case which the government has intentionally or inadvertently destroyed, or for whatever cause, no longer has within its possession, and describe the circumstances surrounding this destruction.

THE PROSECUTION IS UNAWARE OF ANY SUCH EVIDENCE

42. Please provide all documents including any policies or instructions concerning the destruction of notes by interrogators or investigators involved in the questioning of the Accused or any other accused.

THE PROSECUTION IS UNAWARE OF ANY SUCH DOCUMENTS

43. Please produce any evidence, information, testimony, transcripts, or statements indicating that any prospective prosecution witness on any occasion has given false, misleading or contradictory information regarding the charges at bar or any other matter to any persons, including those involved in law enforcement and their agents or informers.

THE PROSECUTION UNDERSTANDS ITS OBLIGATIONS.

44. Please produce any evidence, information, testimony, transcripts, or statements indicating that opinion, reputation or specific acts show that any government witness is not a truthful person or is a threatening, aggressive, or assaultive person.

THE PROSECUTION UNDERSTANDS ITS OBLIGATIONS

45. Please produce any evidence, information testimony, transcripts, or statements indicating that any prospective prosecution witness has given a statement which contradicts that of another potential prosecution witness.

THE PROSECUTION UNDERSTANDS ITS OBLIGATIONS.

46. Please identify the existence and substance of any deals or understandings entered into between any law enforcement agency and any prospective witness in this case.

THE PROSECUTION UNDERSTANDS ITS OBLIGATIONS

47. Please produce any evidence, information, testimony, transcripts, or statements indicating that any witness is biased or prejudiced regarding the Accused or any other accused in this

case in any way. *United States v. Bagley*, 473 U.S. 667 (1985).
THE PROSECUTION UNDERSTANDS ITS OBLIGATIONS.

40. Please produce any evidence of "[o]ther crimes, wrongs, or acts," M.C.R.Evid., Rule 404(b), of the Accused or any other accused that the government intends to introduce at trial or sentencing in this case.

AT THIS TIME THE PROSECUTION IS UNAWARE OF ANY SUCH EVIDENCE. HOWEVER, DISCOVERY PROVIDED MAY CONCERN OTHER CRIMES OR WRONGS BY THE ACCUSED THAT THE PROSECUTION MAY INTRODUCE ALTHOUGH NOT NECESSARILY UNDER THE AUTHORITY OF MCR 404 (b).

41. Please produce all documents and materials related to the interrogation, interviewing, or confinement of the Accused by the United States, including but not limited to the CIA or any private contractors, during which techniques were used which have been described by the government as waterboarding or "enhanced interrogation techniques." In addition, please produce all other documents and material related to the interrogation, interviewing or confinement of the Accused utilizing any other technique or method. In requesting these materials, trial counsel is reminded of the numerous public sources confirming this including statements by CIA director, Michael Hayden to the United States Congress as well as [REDACTED]

42. If any material relating to the preceding request has intentionally or inadvertently been destroyed, lost, or for whatever cause, the government no longer has it within its possession, please identify the material and describe the circumstances surrounding this destruction or loss.

THE PROSECUTION IS UNAWARE OF ANY SUCH EVIDENCE BEING DESTROYED

43. Please produce all documents and materials related to the interrogation, interviewing, or confinement of any other accused by the United States, including but not limited to the CIA or any private contractors, during which techniques were used which have been described by the government as waterboarding or "enhanced interrogation techniques." In addition, please produce all other documents and material related to the interrogation, interviewing or confinement of any other accused utilizing any other technique or method.

CEASED

44. If any material relating to the preceding request has intentionally or inadvertently been destroyed, lost, or for whatever cause, the government no longer has it within its possession, please identify the material and describe the circumstances surrounding this destruction or loss.

SEE ANSWER TO THE SECOND QUESTION NUMBERED AS 42 (THERE ARE TWO QUESTIONS NUMBERED AS 42).

45. Please state whether trial counsel, representatives of the Office of Military Commissions, the Department of Justice, the FBI or any other member of the prosecution or investigative team are able to view Commission courtroom proceedings in Guantanamo in progress while such person or persons are at their offices inside the continental United States. If so, please describe the video or other system utilized to view the courtroom proceedings and the specific government offices equipped to watch such proceeding in the United States. Also, please produce all documents related to this system.

THE US IS NOT IN A POSITION TO ANSWER THIS QUESTION.

46. Please produce all recordings, including audio and video recordings of the Accused and the other accused while inside the Military Commission courtroom including for the proceedings which occurred on 5 June 2008. Also, please produce a copy of any transcript obtained or prepared in connection with these recordings or proceedings. In connection with this request, we seek all recordings of the Accused or the other accused whether the military judge was present inside the Courtroom or not.

YOU MAY REQUEST THE TRANSCRIPT VIA THE PROCEDURES SET FORTH IN CHAPTER SIX OF THE JUDGE'S JUDICIAL RULES.

47. Please produce all recordings, including audio and video recordings, and transcripts that relate to the Combatant Status Review Tribunal (CSRT) of the Accused and the other accused.

TO THE EXTENT CSRT INFORMATION HAS NOT ALREADY BEEN PROVIDED TO YOU IT WILL BE PROVIDED.

48. Please state whether the United States including the Department of Defense or any government agency or agency has monitored or recorded any meetings between the Accused and detailed military counsel or civilian counsel including CAPT Prescott Prince, LTC Michael Acuff, David Nevin and Scott McKay.

If so, please state the dates and times when such monitoring or recording occurred, the purpose of the monitoring or recording, the authority for this monitoring or recording and identify all person that participated in, watched or listened to this monitoring or recording. Also, please produce any notes and recordings, including audio and video recordings, and

transcripts, related to this monitoring and recording.
YOUR ATTORNEY CLIENT COMMUNICATIONS ARE NOT BEING LISTENED TO.

49. Please produce the "Reason to Believe" ("RTB") packet submitted to the President of the United States or any other government official related to the Accused or any other accused.

Also, please produce the documents, if any, confirming the President or any government official authorized the present prosecution of the Accused.

THE MCA DOES NOT HAVE A REQUIREMENT FOR A "REASON TO BELIEVE" PACKET UNLIKE THE EXECUTIVE ORDER.

50. Please produce all documents related to the capture, arrest, custody, interviewing, interrogation or any other treatment of the children of the Accused by the U.S. government, U.S. government agents, civilian contractors or any foreign agent or country. Trial counsel is reminded that various public sources have reported that interrogators abused the young children of the Accused and referred to the Affidavit of Majid Kahn released on April 16, 2006 confirming this abuse. DENIED

51. Please produce all photographs, videotapes or visual depictions of any kind of the Accused including any surveillance photos or photographs taken following his capture or while in custody.

TO THE EXTENT THEY EXIST ALL SUCH EVIDENCE RELEVANT AND MATERIAL THAT THE PROSECUTION INTENDS TO USE AT TRIAL WILL BE PROVIDED.

52. Please produce all documents related to Zacarias Moussaoui including all discovery produced to the defense during the federal prosecution of Mr. Moussaoui in the United States District Court for the Eastern District of Virginia following the events of September 11, 2001.

DENIED

53. Please produce all documents related to Ramzi Yousef including all discovery produced to the defense during the federal prosecution of Mr. Yousef in the United States District Court for the Southern District of New York following the 1993 World Trade Center Bombing.

DENIED

54. Please produce all documents, without limitation, related to the investigation by the United States into the events of September 11, 2001, al Qaeda and Osama bin Laden.

DENIED

55. Please produce all evidence that the United States provided military training or any other form of assistance, either directly or indirectly, to individuals or groups within Afghanistan resisting the Russian occupation of these areas. By way of example, trial counsel is directed to the Stipulation entered into by the United States for use at trial in the case of *United States v. Usama Bin Laden*, Case No. S(7) 98 Cr. 1023 LBS, United States District Court for the Southern District of New York, confirming that as early as 1979 and continuing until 1991, the United States provided "economic and military support to the Afghan mujahedeen through a third country intermediary" and that such support beginning in 1987 "included Stinger antiaircraft missiles."

"ENIRP"

56. Please produce all documents or other materials that may mitigate the punishment in this case or lead to materials that would mitigate the punishment. See *Brady v. Maryland*, 383 U.S. 83, 87 (1963) (prescribing the prosecutor's affirmative obligation to disclose evidence material "either to guilt or to punishment"); and see also, R.M.C. 701 (e) (3). The Supreme Court has spoken of relevant mitigating evidence "in the most expansive terms." *Tennard v. Dretke*, 542 U.S. 274 (2004). "Relevant mitigating evidence is evidence which tends logically to prove or disprove some fact or circumstance which a fact-finder could reasonably deem to have mitigating value." *McKoy v. North Carolina*, 494 U.S. 433, 440 (1990) (internal quotations omitted). While relevant mitigation logically entails aspects of a defendant's conduct as it pertains to circumstances of the offense, *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (plurality opinion) (Berger, C.J.), it also includes conduct and characteristics of the defendants unrelated to the crime. *Skipper v. South Carolina*, 476 U.S. 1, 7 (1986); and *Tennard*, 542 U.S. at 287-88. Mitigating evidence, includes, but is not limited, to the following:

a. The accused acted under duress or under the domination of another person.

b. The accused's capacity to appreciate the criminality of his conduct or to conform to his conduct to the requirements of law was substantially impaired.

d. The accused's capacity for rehabilitation. *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982).

e. The accused's disposition to make a well-behaved and peaceful adjustment to life in confinement. *Skipper v. South Carolina*, 476 U.S. 1, 7 (1986).

f. The conditions under which the Accused was confined from the time of his apprehension to present.

g. Any other evidence of the circumstances of the crime or the character and record of any party to the crime that would tend to show that another party was more culpable, more dominant or more dangerous than the defendant.

THE PROSECUTION UNDERSTANDS ITS OBLIGATIONS.

Regarding those portions of the request that are denied, the Bureau makes no representation as to the accuracy or the infirmity of the facts or events as alleged in those portions of the request, or whether any information exists within the general jurisdiction or control of the United States Government that is potentially responsive to the request.

To date you have been provided nearly 40,000 pages of material. In addition, as a courtesy, we provided you with a 266 page index concerning approximately 25,000 of those pages.

Attachment C

UNITED STATES OF AMERICA

v.

KHALID SHEIKH MOHAMMED, WALID
MUHAMMAD SALIH MUBARAK BIN 'ATTASH,
RAMZI BIN AL SHIBH, ALI ABDUL AZIZ ALI,
MUSTAFA AHMED ADAM AL HAWSAWI

(KHALID SHEIKH MOHAMMED)

)
)
D-095

)
)
DECLARATION OF
DAVID Z. NEVIN

)
)
19 JANUARY 2009

David Z. Nevin makes the following declaration under penalty of perjury:

1. I am an attorney, duly licensed to practice law in the State and federal courts of Idaho, and in other courts and jurisdictions. I am founding partner of the law firm of Nevin, Benjamin, McKay & Bartlett, LLP, in Boise, Idaho. I am also a qualified civilian defense counsel, and admitted to practice before the Military Commissions. I make the following declaration based on my own personal observations in support of Mr. Khalid Sheikh Mohammed's motion to compel the production of discovery materials.

2. I serve as civilian advisory counsel to Mr. Khalid Sheikh Mohammed, who is presently detained at the United States Naval Station in Guantanamo Bay, Cuba ("GTMO"). Mr. Mohammed requested this assistance of me and my law partner, Scott McKay, at the initial arraignment on 5 June 2008.

3. I have traveled to GTMO on at least 10 occasions beginning on 2 June 2008. I have met and spoken with Mr. Mohammed on multiple occasions during personal visits and court proceedings. During some of our conversations Mr. Mohammed and I have discussed the details of his capture and subsequent confinement by the United States government, specifically the Central Intelligence Agency, and later the Department of Defense at GTMO. I also have reviewed discovery materials produced by the government, and various public source materials, and have consulted with investigators and experts in various subject matters regarding the interrogation and treatment of Mr. Mohammed and other so called "high value detainees" (HVDs) by the United States.

4. Based upon the foregoing, I am informed and believe the following concerning the capture, interrogation and treatment of Mr. Mohammed. The present declaration is not intended to be a comprehensive description of all of Mr. Mohammed's mistreatment. For a variety of reasons, Mr. Mohammed may not have advised me of all the details of his mistreatment while in custody, including because he is incapable of remembering it or because some of this mistreatment may have occurred while he was unconscious or otherwise unable fully to perceive or recall it. Nor have I attempted to set forth every detail that I have learned concerning these subjects. Despite repeated requests, neither I nor Mr. Mohammed have been provided many materials known to

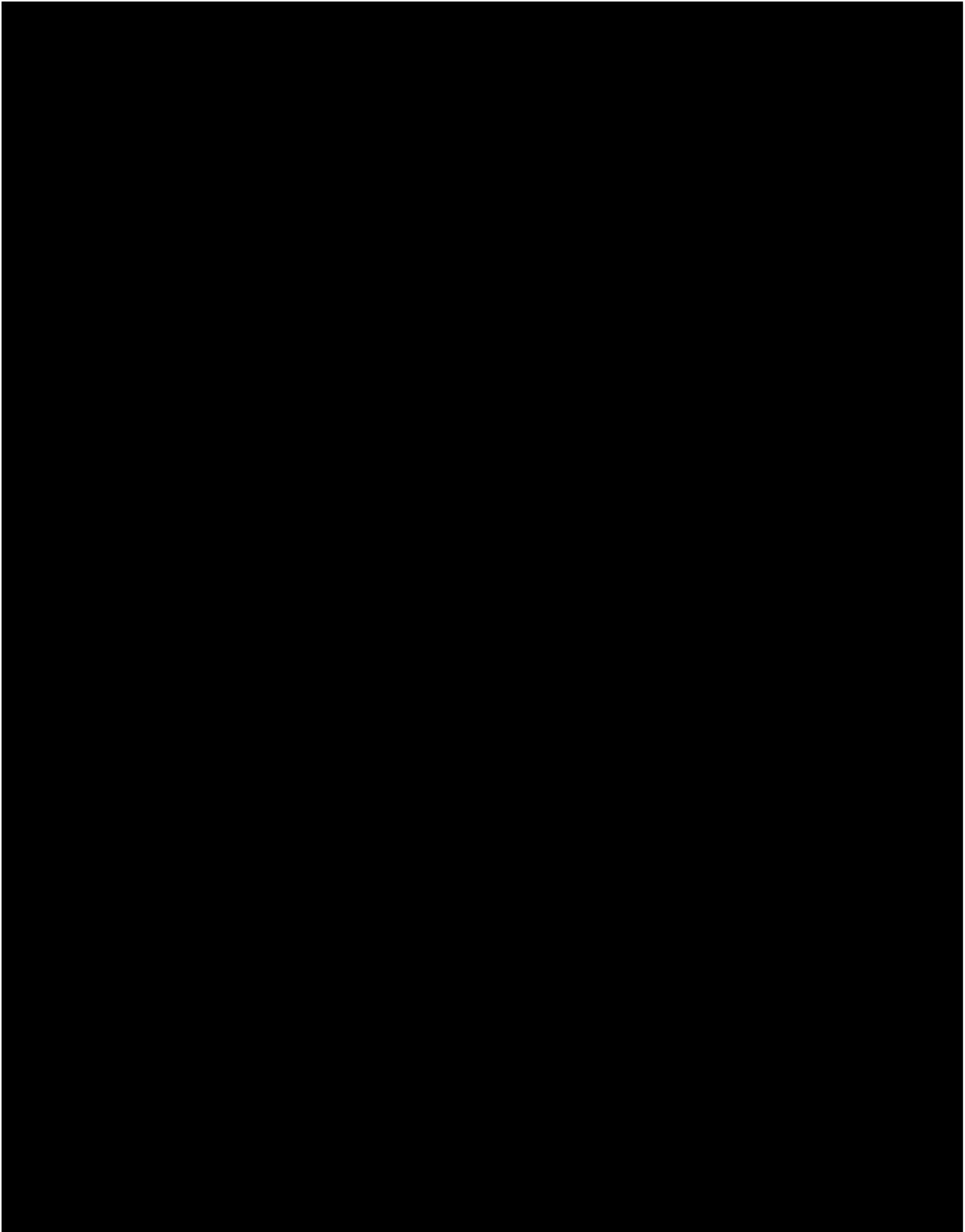
be in the possession of the government which document this mistreatment. Upon information and belief I state the following.

a. Mr. Mohammed was captured [REDACTED] in Rawalpindi, Pakistan on or about March 1, 2003. [REDACTED]

[REDACTED]

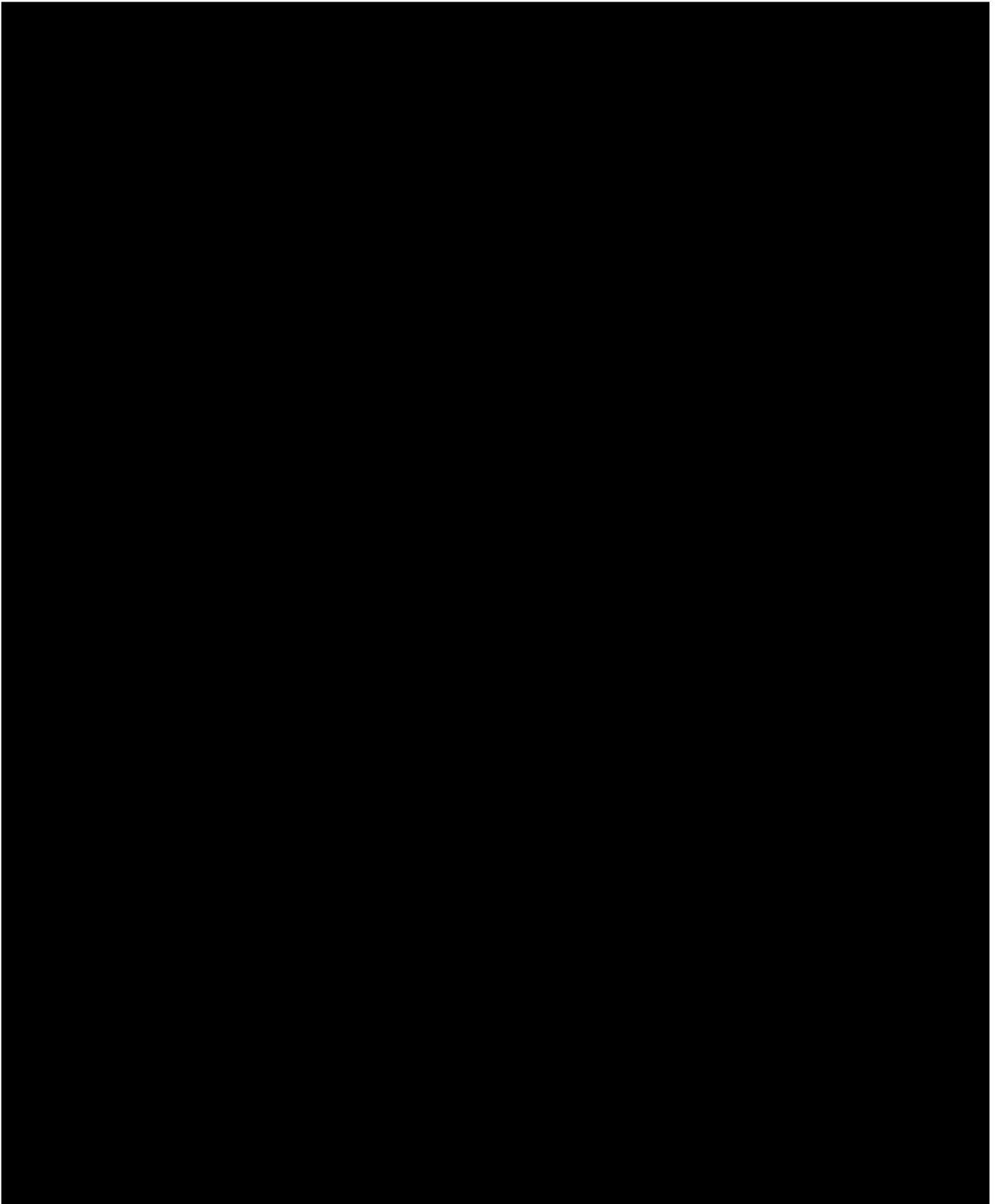
[REDACTED]

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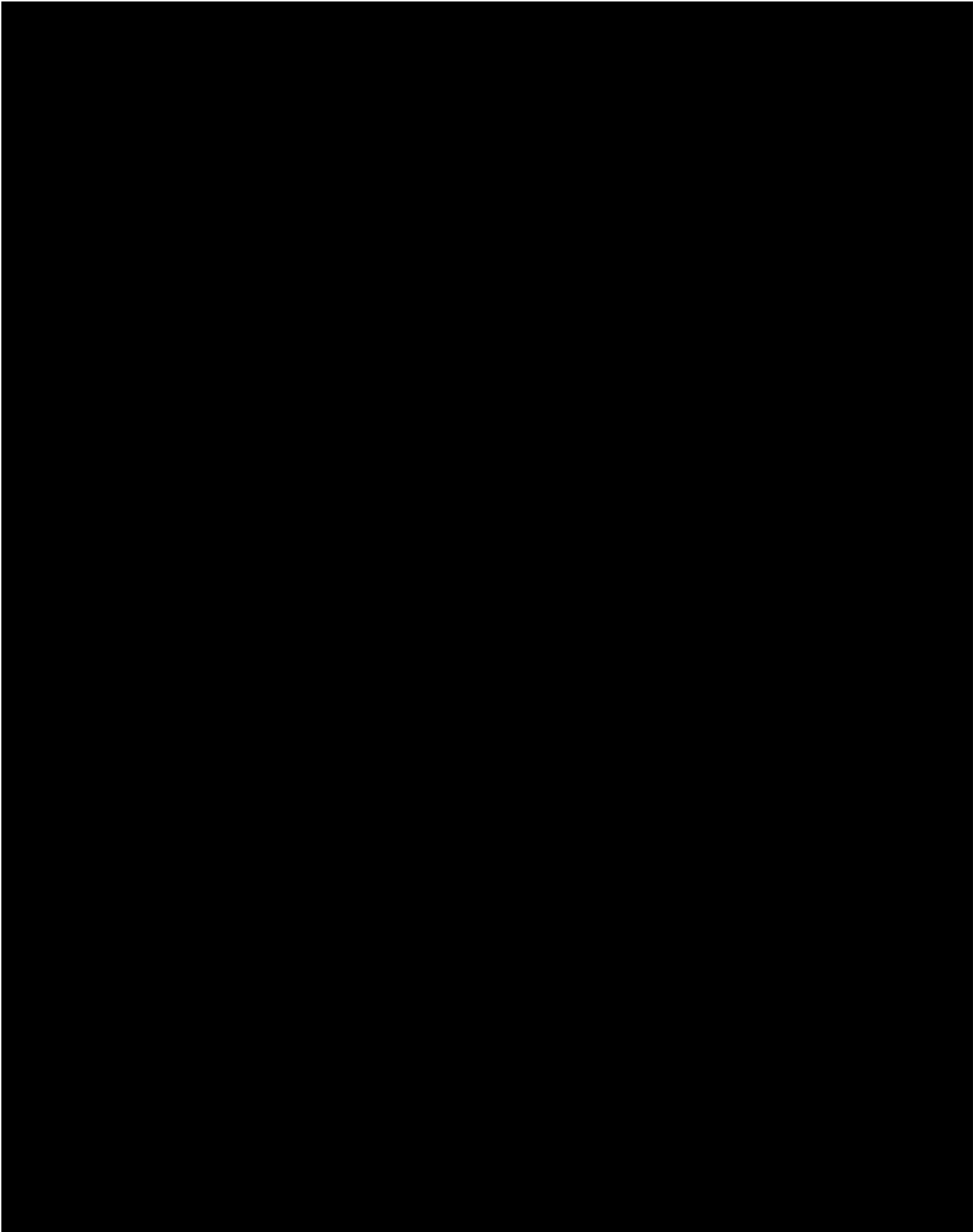
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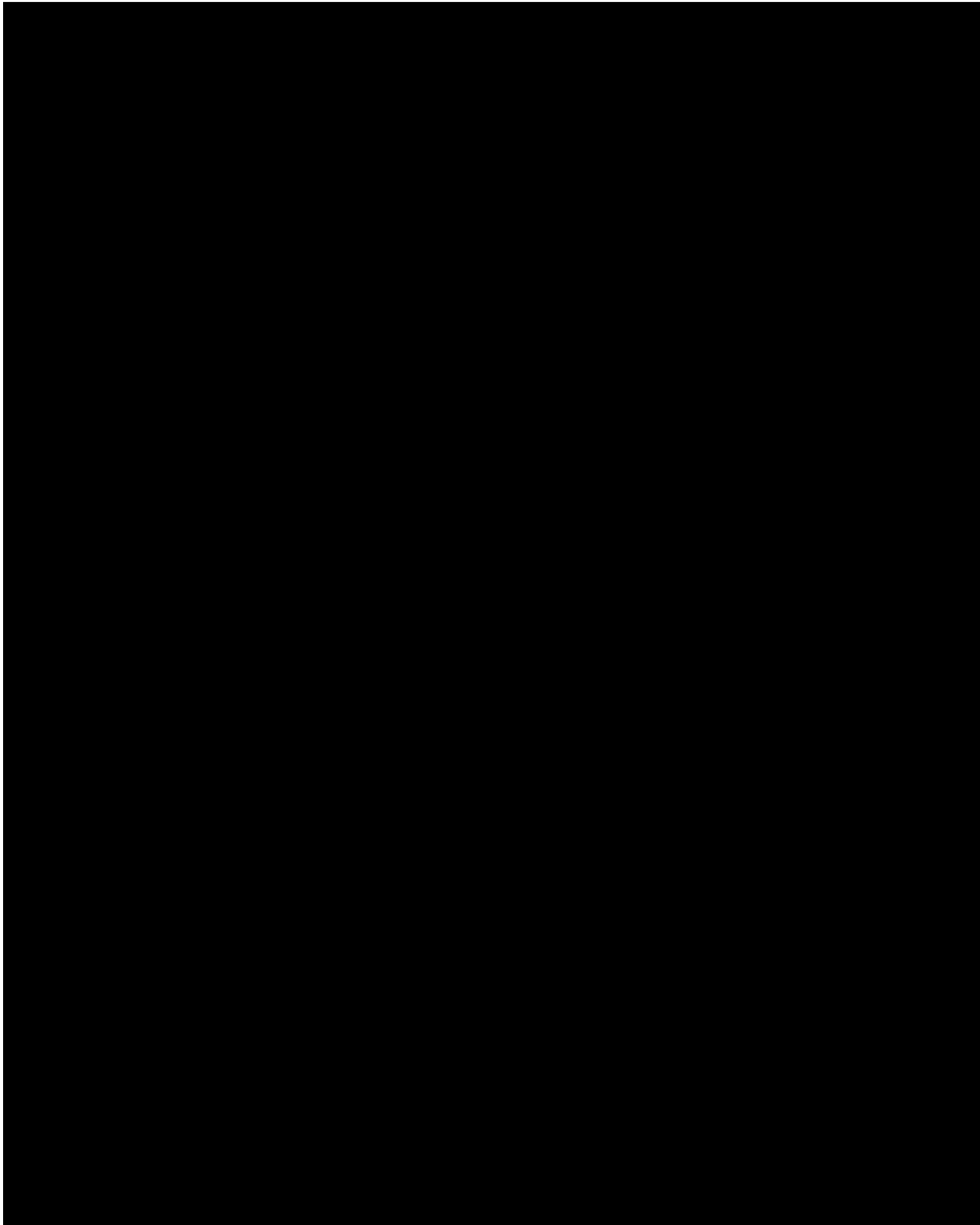
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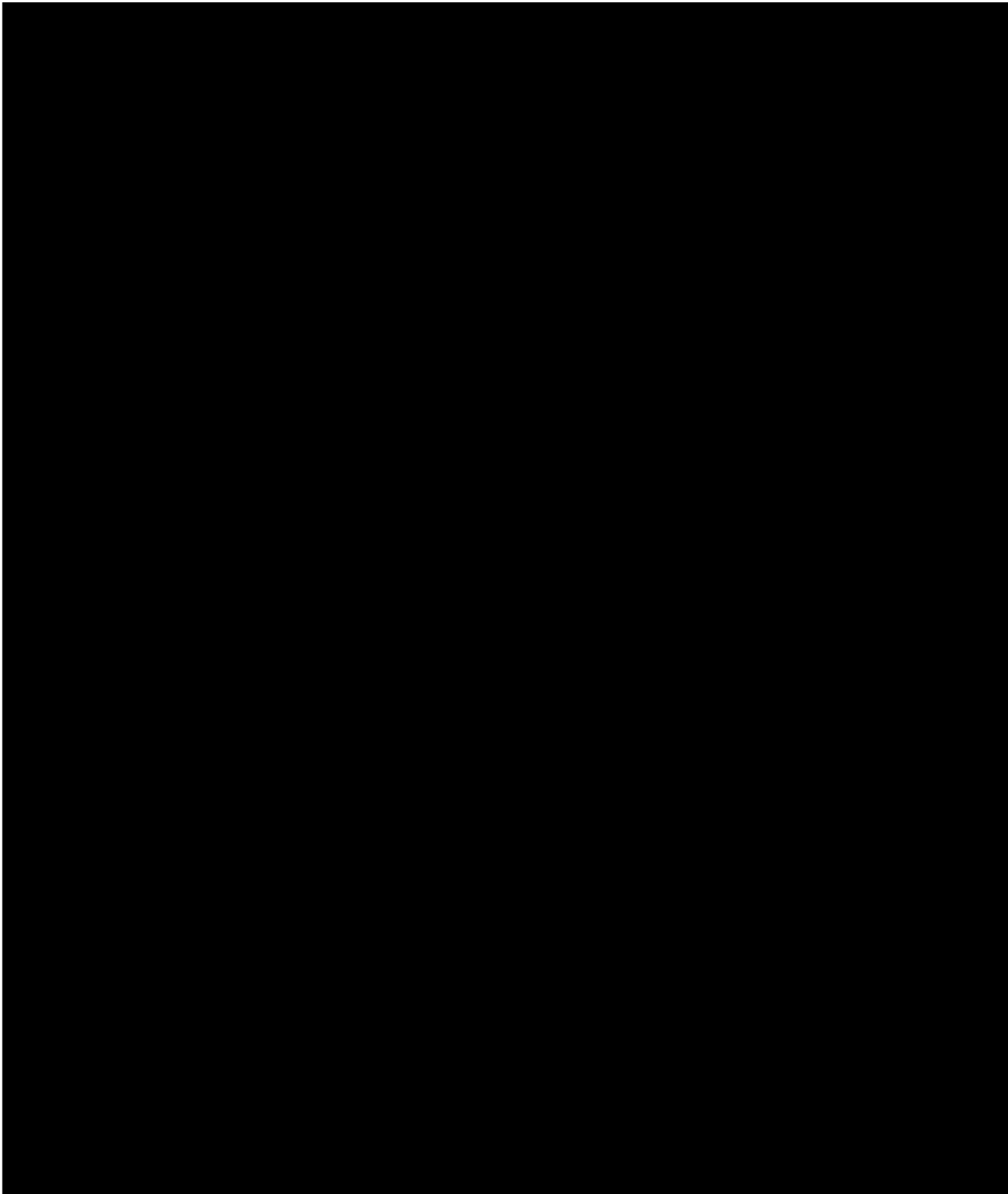
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g. In or about early September of 2006, Mr. Mohammed was transferred to the custody of the U.S. Military at Guantanamo Bay, where he has remained since that time. Prior to this time, [REDACTED] Mr. Mohammed was in the custody of the Central Intelligence Agency.

~~TS//SCI~~

1) At GTMO Mr. Mohammed has not been subjected to the physical abuse and torture used on him earlier in his confinement. He has however endured more subtle forms of psychological abuse such as banging of cell doors around the clock and searches of his cell area in the middle of the night.

2) In January of 2007 Mr. Mohammed was questioned by the Federal Bureau of Investigation while at GTMO. Present in the rooms where Mr. Mohammed met with the FBI and where he has met with his own attorneys are recording devices including cameras. At the outset of these interviews Mr. Mohammed indicated that he wished to be represented by an attorney, but he was told that an attorney could not be provided until he was actually charged with a criminal offense.

3) Mr. Mohammed also has met with representatives of the International Committee of the Red Cross (ICRC) while at GTMO. Based upon recent testimony in Commission proceedings, it appears that meetings between detainees and the ICRC were secretly recorded.

4)

As a result, he was effectively "disappeared" by the United States following his arrest in March 2003.

5) On 24 April 2008, Mr. Mohammed was finally provided access to an attorney, CAPT Prescott Prince, JAGC, USNR, which was over five years after Mr. Mohammed first requested an attorney following his capture and over one year after being interviewed by the FBI at GTMO in January 2007 and his inquiry at that time about an attorney.

6). During my meetings with Mr. Mohammed, I have personally observed scars on his ankles and wrists consistent with his description of his treatment while in the custody of the United States. Additionally, although I am not a medical expert, it is my judgment based on my education, training and experience that his tone and affect in describing his prior treatment is consistent with a person who has been the victim of torture. Further, his descriptions to me of these matters have been consistent over time and at different interviews. It is also consistent with public source reporting on the treatment of Mr. Mohammed and other high value detainees.

5. I have reason to believe that the government has in its possession numerous photographs, video and audio recordings of Mr. Mohammed which document and are otherwise relevant to the events described above.

6.

7.

8.

Individuals involved, directly or indirectly, in the abuse, mistreatment and torture of Mr. Mohammed possess relevant information and knowledge concerning Mr. Mohammed.

9.

10. The foregoing is not intended to comprehensively chronicle all relevant matters concerning the mistreatment and confinement of Mr. Mohammed. Nor are the specified matters intended to chronicle all discovery that must be produced by the government. Nevertheless, the described matters raise significant issues which in my professional judgment must be thoroughly pursued and produced through discovery, and are relevant to both the trial and sentencing phases of this case. Indeed, in this capital case, Mr. Mohammed is entitled fully to document the precise extent of the torture which has been imposed upon him, because the extent of the punishment previously imposed on him is directly relevant to the propriety of a capital sentence.

I have read the foregoing declaration, know the contents thereof, and declare under penalty of perjury of the laws of the United States that it is true and correct.

~~TS//SCI~~

DATED this 18th day of January, 2009.

_____/s/
David Z Nevin

~~TS//SCI~~

Attachment D

UNCLASSIFIED

Verbatim Transcript of Combatant Status Review Tribunal Hearing for ISN 10024

OPENING

REPORTER: On the record

RECORDER: All rise.

PRESIDENT: Remain seated and come to order. Go ahead, Recorder.

RECORDER: This Tribunal is being conducted at 1328 March 10, 2007 on board U.S. Naval Base Guantanamo Bay, Cuba. The following personnel are present:
Captain [REDACTED], United States Navy, President
Lieutenant Colonel [REDACTED], United States Air Force, Member
Lieutenant Colonel [REDACTED], United States Marine Corps, Member
Lieutenant Colonel [REDACTED], United States Air Force, Personal Representative
Language Analysis [REDACTED]
Gunnery Sergeant [REDACTED], United States Marine Corps, Reporter
Lieutenant Colonel [REDACTED], United States Army, Recorder
Captain [REDACTED] is the Judge Advocate member of the Tribunal.

OATH SESSION 1

RECORDER: All Rise.

PRESIDENT: The Recorder will be sworn. Do you, Lieutenant Colonel [REDACTED] solemnly swear that you will faithfully perform the duties as Recorder assigned in this Tribunal so help you God?

RECORDER: I do.

PRESIDENT: The Reporter will now be sworn. The Recorder will administer the oath.

RECORDER: Do you Gunnery Sergeant [DELETED] swear or affirm that you will faithfully discharge your duties as Reporter assigned in this Tribunal so help you God?

REPORTER: I do.

PRESIDENT: The Translator will be sworn.

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RECORDER: Do you swear or affirm that you will faithfully perform the duties of Translator in the case now in hearing so help you God?

TRANSLATOR: I do.

PRESIDENT: We will take a brief recess now in order in to bring Detainee into the room. Recorder note the date and time.

RECORDER: The time is 1:30 pm hours on 10 March 2007. This Tribunal is in now in recess. [The Tribunal recessed at 1330, 10 March 2007. The members withdrew from the hearing room.]

CONVENING AUTHORITY

RECORDER: All Rise.
[The Tribunal reconvened and the members entered the room at 1334, 10 March 2007.]

PRESIDENT: This hearing will come to order. Please be seated.

PRESIDENT: Before we begin, Khalid Sheikh Muhammad, I understand you speak and understand English. Is that correct?

DETAINEE: [Detainee nods his head in affirmative].

PRESIDENT: Alright. Are you comfortable in continuing in English or would you like everything translated in Arabic?

DETAINEE: Everything in English but if I have a problem the linguist will help me.

PRESIDENT: We will proceed in English. If you indicate to me that you would like something translated we will go ahead and do that. Alright?

PRESIDENT: This Tribunal is convened by order of the Director, Combatant Status Review Tribunals under the provisions of his Order of 22 February 2007.

PRESIDENT: This Tribunal will determine whether Khalid Sheikh Muhammad meets the criteria to be designated as an enemy combatant against the United States or its coalition partners or otherwise meets the criteria to be designated as an enemy combatant.

OATH SESSION 2

PRESIDENT: The members of this Tribunal shall now be sworn. All rise.

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RECORDER: Do you swear or affirm that you will faithfully perform your duties as a member of this Tribunal: that you will impartially examine and inquire into the matter now before you according to your conscience, and the laws and regulations provided; that you will make such findings of fact and conclusions as are supported by the evidence presented; that in determining those facts, you will use your professional knowledge, best judgment, and common sense; and that you will make such findings as are appropriate according to the best of your understanding of the rules, regulations, and laws governing this proceeding, and guided by your concept of justice so help you God?

TRIBUNAL: I do.

PRESIDENT: The Recorder will now administer the oath to the Personal Representative.

RECORDER: Do you swear or affirm that you will faithfully perform the duties of Personal Representative in this Tribunal so help you God?

PERSONAL
REPRESENTATIVE: I do.

PRESIDENT: Please be seated.

PRESIDENT: The Recorder, Reporter, and Translator have previously been sworn.

EXPLANATION OF PROCEEDINGS

PRESIDENT: Khalid Sheikh Muhammad, you are hereby advised that the following applies during this hearing:

PRESIDENT: You may be present at all open sessions of the Tribunal. However, if you become disorderly, you will be removed from the hearing, and the Tribunal will continue to hear evidence in your absence.

PRESIDENT: You may not be compelled to testify at this Tribunal. However, you may testify if you wish to do so. Your testimony can be under oath or unsworn.

PRESIDENT: You may have the assistance of a Personal Representative at the hearing. Your assigned Personal Representative is present.

PRESIDENT: You may present evidence to this Tribunal, including the testimony of witnesses who are reasonably available and whose testimony is relevant to this hearing. You may question witnesses testifying at the Tribunal.

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PRESIDENT: You may examine documents or statements offered into evidence other than classified information. However, certain documents may be partially masked for security reasons.

PRESIDENT: Khalid Sheikh Muhammad, do you understand this process?

DETAINEE: Yes. If I have question can I ask you?

PRESIDENT: Yes, you may.

DETAINEE: About the testimony which I ask about the witnesses.

PRESIDENT: Yes, I'm going to address the witnesses shortly. So, if you will bear with us I will take that up in a few moments.

DETAINEE: Okay.

PRESIDENT: Do you have any questions concerning the Tribunal process?

DETAINEE: Okay by me.

PRESENTATION OF UNCLASSIFIED INFORMATION

PRESIDENT: Personal Representative, please provide the Tribunal with the Detainee Election Form.

PERSONAL
REPRESENTATIVE: I am handing the Tribunal the Detainee Election Form, which was previously marked as Exhibit D-a.

PRESIDENT: Alright, the Tribunal has received Exhibit D-a that indicates the Detainee wants to participate in the Tribunal and wants the assistance of the Personal Representative.

RECORDER PRESENTS UNCLASSIFIED

PRESIDENT: Recorder, please provide the Tribunal with the unclassified evidence.

RECORDER: I am handing the Tribunal what has previously been marked as Exhibit R-1, the unclassified summary of the evidence that relates to this Detainee's status as an enemy combatant. A translated copy of this exhibit was provided to the Personal

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Representative in advance of this hearing for presentation to the Detainee. In addition, I am handing to the Tribunal the following unclassified exhibits, marked as Exhibit R-2. Copies of these Exhibits have previously been provided to the Personal Representative. [Documents presented to Tribunal]

PRESIDENT: Recorder, please read the unclassified summary of evidence for the record. But before you proceed, Khalid Sheikh Muhammad, let me remind you that you must not comment on this evidence at this time. You will be provided with an opportunity shortly to provide any comments that you would like. Recorder, please proceed.

RECORDER: The following facts support the determination that the Detainee is an enemy combatant:

Paragraph a. On the morning of 11 September 2001, four airliners traveling over the United States were hijacked. The flights hijacked were: American Airlines Flight 11, United Airlines Flight 175, American Airlines Flight 77, and United Airlines Flight 93. At approximately 8:46 a.m., American Airlines Flight 11 crashed into the North Tower of the World Trade Center, resulting in the collapse of the tower at approximately 10:25 a.m. At approximately 9:05 a.m., United Airlines Flight 175 crashed into the South Tower of the World Trade Center, resulting in the collapse of the tower at approximately 9:55 a.m. At approximately 9:37 a.m., American Airlines Flight 77 crashed into the southwest side of the Pentagon in Arlington, Virginia. At approximately 10:03 a.m., United Airlines Flight 93 crashed in Stoney Creek Township, Pennsylvania. These crashes and subsequent damage to the World Trade Center and the Pentagon resulted in the deaths of 2,972 persons in New York, Virginia, and Pennsylvania.

Paragraph b. The Detainee served as the head of the al Qaida military committee and was Usama bin Laden's principal al Qaida operative who directed the 11 September 2001 attacks in the United States.

Paragraph c. In an interview with an al Jazeera reporter in June 2002, the Detainee stated he was the head of the al Qaida military committee.

Paragraph d. A computer hard drive seized during the capture of the Detainee contained information about the four airplanes hijacked on 11 September 2001 including code names, airline company, flight number, target, pilot name and background information, and names of the hijackers.

Paragraph e. A computer hard drive seized during the capture of the Detainee contained photographs of 19 individuals identified as the 11 September 2001 hijackers.

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Paragraph f. A computer hard drive seized during the capture of the Detainee contained a document that listed the pilot license fees for Mohammad Atta and biographies for some of the 11 September 2001 hijackers.

Paragraph g. A computer hard drive seized during the capture of the Detainee contained images of passports and an image of Mohammad Atta.

Paragraph h. A computer hard drive seized during the capture of the Detainee contained transcripts of chat sessions belonging to at least one of the 11 September 2001 hijackers.

Paragraph i. The Detainee directed an individual to travel to the United States to case targets for a second wave of attacks.

Paragraph j. A computer hard drive seized during the capture of the Detainee contained three letters from Usama bin Laden.

Paragraph k. A computer hard drive seized during the capture of the Detainee contained spreadsheets that describe money assistance to families of known al Qaida members.

Paragraph l. The Detainee's name was on a list in a computer seized in connection with a threat to United States airlines, United States embassies and the Pope.

Paragraph m. The Detainee wrote the *hojinka plot*, the airline bomb plot which was later found on his nephew Ramzi Yousef's computer.

Paragraph n. The *hojinka plot* is also known as the Manila air investigation.

Paragraph o. The Manila air investigation uncovered the Detainee conspired with others to plant explosive devices aboard American jetliners while those aircraft were scheduled to be airborne and loaded with passengers on their way to the United States.

Paragraph p. The Detainee was in charge of and funded an attack against United States military vessels heading to the port of Djibouti.

Paragraph q. A computer hard drive seized during the capture of the Detainee contained a letter to the United Arab Emirates threatening attack if their government continued to help the United States.

Paragraph r. During the capture of the Detainee, information used exclusively by al Qaida operational managers to communicate with operatives was found.

Paragraph s. The Detainee received funds from Kuwaiti-based Islamic extremist groups and delivered the funds to al Qaida members.

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Paragraph t. A computer hard drive seized during the capture of the Detainee contained a document that summarized operational procedures and training requirements of an al Qaida cell.

Paragraph u. A computer hard drive seized during the capture of the Detainee contained a list of killed and wounded al Qaida martyrs.

And lastly, Paragraph v. Passport photographs of al Qaida operatives were seized during the capture of the Detainee.

RECORDER: Sir, this concludes the summary of unclassified evidence.

PRESIDENT: Very well.

PRESIDENT: Personal Representative, does the Detainee have any evidence to present to this Tribunal?

PERSONAL

REPRESENTATIVE: Yes, sir. I am handing to the Tribunal the following unclassified exhibits marked as Exhibits D-b through D-d. Copies of these exhibits have been previously provided to the Recorder. [Documents presented to Tribunal]

PRESIDENT: Exhibit D-b appears to be a statement that the Detainee has provided.

PERSONAL

REPRESENTATIVE: Yes, Sir.

PRESIDENT: Alright. And Exhibit D-c contains hand written notes that appear to be Arabic and English as well as the typed version of that. Is that correct?

PERSONAL

REPRESENTATIVE: Yes, Sir.

PRESIDENT: Alright. And D-d is a written statement regarding alleged abuse or treatment that the Detainee received.

PERSONAL

REPRESENTATIVE: Yes, Sir.

PRESIDENT: Alright. We will go into those shortly.

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PRESIDENT: Khalid Sheikh Muhammad, you may now make an oral statement to the Tribunal, and you have the assistance of your Personal Representative in doing so. Do you wish to make an oral statement to this Tribunal?

DETAINEE: He will start, the Personal Representative: PR will read then later I will comment.

PRESIDENT: Very well, you may proceed.

RECORDER: Sir, would you hold one moment?

PRESIDENT: Yes.

RECORDER: Ah, before the Detainee makes a statement. ah, I'd like to ah.

PRESIDENT: Question of the oath?

RECORDER: Ah, no sir.

RECORDER: Concerning classified evidence.

PRESIDENT: Very well.

PRESIDENT: Do you have any further evidence to present at this time, Recorder?

RECORDER: Mr. President, I have no further unclassified evidence for the Tribunal but I respectfully request a closed Tribunal session at an appropriate time to present classified evidence relevant to this Detainee's status as an enemy combatant.

PRESIDENT: Very well, your request for a closed session is granted and will be taken up in due course.

PRESIDENT: You may proceed, PR.

PERSONAL

REPRESENTATIVE: The Detainee responds to the unclassified summary of evidence with the following key points.

PERSONAL

REPRESENTATIVE: "Some paragraphs under paragraph number 3, lead sentence are not related to the context or meaning of the aforementioned lead sentence. For example, paragraph 3-a is only information from news or a historical account of events on 11 September 2001, and note with no specific linkage being made in this

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paragraph to me or the definition of Enemy Combatant. As another example, sub-paragraph 3-n makes no linkage to me or to the definition of Enemy Combatant."

DETAINEE: Are they following along?

PERSONAL

REPRESENTATIVE: Ah, they they have that in front of them for reference.

PRESIDENT: Yes.

DETAINEE: Okay.

PERSONAL

REPRESENTATIVE: Second main point: "There are two false statements in the Summary of Evidence. Sub-paragraph 3-c is false. I never stated to the Al Jazeera reporter that I was the head of the al Qaida military committee. Also, sub-paragraph 3-s is false. I did not receive any funds from Kuwait."

PERSONAL

REPRESENTATIVE: Point number 3. "There is an unfair 'stacking of evidence' in the way the Summary of Evidence is structured. In other words, there are several sub-paragraphs under parent-paragraph 3 which should be combined into one sub-paragraph to avoid creating the false perception that there are more allegations or statements against me specifically than there actually are. For example, sub-paragraphs 3-m through 3-o, which pertain to the *bojinka* plot should be combined into one paragraph, as should paragraphs 3-a through 3-h, which pertain to 9/11."

PERSONAL

REPRESENTATIVE: Lastly, my name is misspelled in the Summary of Evidence. It should be S-h-a-i-k-h or S-h-e-i-k-h, but not S-h-a-y-k-h, as it is in the subject line.

PRESIDENT: Would you like to add anything to that, Khalid Sheikh Muhammad?

PERSONAL

REPRESENTATIVE: Final statement.

DETAINEE: No, I just want to ask about witnesses.

PRESIDENT: Okay, ah, let's finish with these then I will get to the witnesses.

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DETAINEE: Okay.

PRESIDENT: Try to keep it in order.

PRESIDENT: You want to continue, PR? Do you have have another statement?

PERSONAL

REPRESENTATIVE: That concludes this Detainee's response to the, ah, unclassified summary of evidence, sir.

PRESIDENT: Oh.

CALLING OF WITNESSES

PRESIDENT: We will now allow for the calling of witnesses. All witnesses called before this Tribunal may be questioned by the Detainee if present, the Personal Representative, the Recorder, and the Tribunal Members.

PRESIDENT: Does the Recorder have any witnesses to present?

RECORDER: No, sir.

PRESIDENT: Alright.

PRESIDENT: From the Detainee Election Form and I was informed earlier that the Detainee requested the presence of two witnesses to testify here today. Ramzi bin al-Shibh and Mustafa Hawsawi. The Detainee believes the witnesses can provide testimony related to the Detainee's actions specified in the unclassified summary of the evidence.

PRESIDENT: I have had the opportunity to review the request for witnesses and I have made some findings and I'm going to place them on the record now and when I conclude that, Khalid Sheikh Muhammad, you may respond to that if you'd like.

PRESIDENT: First the request for Ramzi bin al-Shibh, the proffer of the testimony from the Detainee was that Ramzi is alleged to have been present during the al Jazeera interview in June 2002 during which it is said the Detainee claimed to be head of al Qaida Military Committee. The Detainee claims he never stated that, to be the head of the Military Committee, during the interview and states that Ramzi, if called, can confirm this.

PRESIDENT: This witness is not relevant in the President's view for the following reasons. In the totality of the circumstances and given the nature and quality of the other unclassified evidence, the Detainee's alleged statements as reported in al Jazeera

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are of limited value and negligible relevancy to the issue of combatant status. As such, any corroboration or contradiction by the proffered witness is not relevant. The creditability determinations with regard to R-2, which is the al Jazeera article, can be made by the Tribunal without the proffered testimony. As such, the Detainee's request for the production of that witness is denied.

PRESIDENT: As to the request for Mustafa Hawsawi, ah, it is proffered that Hawsawi, if called, could testify that the computer/hard drive referenced in the unclassified summary was not this Detainee's property and that the place of the Detainee's capture was not the house of the Detainee. In the President's view this testimony is not relevant to the issues regarding the Detainee's capture or his combatant status for the following reasons.

PRESIDENT: Whether the Detainee had actual legal title or ownership of the computer/hard drive or the house where the capture took place is irrelevant to the determination of the Detainee's status as an enemy combatant. Based on the proffer, if true, Hawsawi's testimony will not provide relevant information. The issue of ownership, while of some interest, is not relevant to status. What is relevant is possession, usage, connection and presence. Hawsawi's testimony will not speak to any relevant information in regard to such points. As such, the request for the production of that witness is denied.

PRESIDENT: If you would like to respond to that, I'll hear you.

DETAINEE: Most of these facts which be written are related to this hard drive. And more than eleven of these facts are related to this computer. Other things are which is very old even nobody can bring any witnesses for that as you written here if it will be ah a value for you for the witness near by you will do it. This computer is not for me. Is for Hawsawi himself. So I'm saying I need Hawsawi because me and him we both been arrested day. Same way. So this computer is from him long time. And also the problem we are not in court and we are not judge and he is not my lawyer but the procedure has been written reported and the way has mostly as certain charged against me: tell him, [Arabic Phrase].

TRANSLATOR: [Translating] They are only accusations.

DETAINEE: So accusations. And the accusations, they are as you put for yourself ah definition for enemy combatant there are also many definitions for that accusation of fact or charges that has been written for any ah. [Arabic Phrase]

TRANSLATOR: [Translating] Person is accused.

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DETAINEE: So, if I been accused then if you want to put facts against me also the definition for these facts. If you now read number N now what is written the *bojinka* plot. Is known many lead investigation it is not related to anything facts to be against me. So when I said computer hard drive/ hard disk, same thing. All these point only one witness he can say yes or not cause he is this computer is under his possession him computer. And also specifically if he said Mohammad Atta picture been this hard drive. I don't think this should accepted. There are many 100 thousand Americans who have a lot of picture on their computer. You cannot say I find Muhammad Atta on your computer then you use this fact against you. Or you find any files in your computer to be what about it's mine. it's not my computer. If this witness, he will state that this known and here that has been ninety percent of what is written is wrong. And for Ramzi, for reporter in Jazecera, he claimed that I state this one and you know the media man. How they are fashionable. What they mean in their own way in a whole different way. They just wrote it so he say I state. But I never stated and I don't have any witnesses and witness are available here at Guantanamo. He is Detainee. He was with me. Which he been mostly in all my interview with him. Me and them, there was three person, me and Ramzi and this reporter. So if you not believe me, not believe him, believe my witness Ramzi. Then he's what he state the reporter most is false. I not denying that I'm not an enemy combatant about this war but I'm denying the report. It not being written in the proper way. Which is really facts and mostly just being gathered many information. General information that form in way of doing, to use in facts against me.

PRESIDENT: I have heard and understood your argument. In order for me to make my determinations regarding the production of witnesses I first have to believe that they are relevant for the reasons that I have stated. For the reasons I have stated, I do not believe they are relevant. Whether or not they may be available here on Guantanamo, is a second decision to be made, but only if I decide they are relevant. I have heard your arguments. I noted them. However, my ruling stands.

PRESIDENT: The Recorder has no witnesses, is that my understanding?

RECORDER: No, sir.

PRESIDENT: And there are no other approved witnesses to taken up. Ah, we will take a brief moment to review the unclassified evidence that we received so far and then we will pick back up in the proceeding.

MEMBER: If I might ask a question real quick of the PR. This is the entire translation of the hand written notes?

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PERSONAL

REPRESENTATIVE: Yeah. The hand written notes are the Detainee is on yellow.

MEMBER: Yes.

PERSONAL

REPRESENTATIVE: and, then the next set of notes, hand written notes, are the Linguist's translation and then the final hard copy printed that's, ah, that...

MEMBER: Type written.

PERSONAL

REPRESENTATIVE: Typed from Linguist's notes.

MEMBER: Type from Linguist's translations. Okay.

PRESIDENT: Khalid Sheikh Muhammad, I did not offer you an oath early because I was informed by the Personal Representative that you would be making some statement later on in these proceedings relevant to the truthfulness of your comments. So, if you would like to take an oath I would administer one to you but I did understand that you going to make a statement.

DETAINEE: In the final statement, I will explain why then.

PRESIDENT: Alright. Thank you. [Tribunal pauses to review D-a thru D-d]

MEMBER: Seen those.

TRANSLATOR: Sir.

PRESIDENT: Yes.

TRANSLATOR: He wanted me to translate a Koranic verse on the spot.

PRESIDENT: I will permit it.

TRANSLATOR: Thank you.

TRANSLATOR: Can I ask him for clarification?

PRESIDENT: Yes.

PRESIDENT: Do you need a few more moments, Translator?

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TRANSLATOR: Yes, sir, about thirty seconds.

PRESIDENT: Go ahead and take your time.

TRANSLATOR: Would you me to read the English translation after he read Arabic verse or would like him to read it.

PRESIDENT: You want to save that for later?

TRANSLATOR: [Nods head]

PRESIDENT: Alright.

PRESIDENT: Let me take up a few things that have come up as based on my review of these documents that have been provided to us so far. D-d, appears to be a written statement regarding certain treatment that you claim to have received at the hands of agents of the United States government as you indicated from the time of your capture in 2003 up until before coming here to Guantanamo in September 2006.

PRESIDENT: Is that correct?

DETAINEE: Yes.

PRESIDENT: Alright.

PRESIDENT: Now, I haven't seen any statements in the evidence we receive so far that claim to come from you other than acknowledging whether you were or not the head of the Military Committee. Were any statements that you made as the result of any of the treatment that you received during that time frame from 2003 to 2006? Did you make those statements because of the treatment you receive from these people?

DETAINEE: Statement for whom?

PRESIDENT: To any of these interrogators.

DETAINEE: CIA peoples. Yes. At the beginning when they transferred me [REDACTED].

PRESIDENT: What I'm trying to get at is any statement that you made was it because of this treatment, to use your word, you claim torture. Do you make any statements because of that?

TRANSLATOR: Sir, for clarification.

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PRESIDENT: Can you translate it?

TRANSLATOR: I will translate in Arabic.

PRESIDENT: Yes.

TRANSLATOR: [Translating above]

DETAINEE: I ah cannot remember now [REDACTED] I'm senior man. Many people they know me which I don't them. I ask him even if he knew George Bush. He said, yes I do. He don't know you that not means its false. [REDACTED]. I said yes or not. This I said.

PRESIDENT: Alright, I understand.

PRESIDENT: Is there anything you would like to correct, amend, modify or explain to us from what you said back then?

DETAINEE: I want to just it is not related enemy combatant but I'm saying for you to be careful with people. That you have classified and unclassified facts. My opinion to be fair with people. Because when I say, I will not regret when I say I'm enemy combatant. I did or not I know there are other but there are many Detainees which you receive classified against them maybe, maybe not take away from me for many Detainees false witnesses. This only advice.

PRESIDENT: So you are aware that other...

DETAINEE: Yes.

PRESIDENT: People made false statement as a result of this?

DETAINEE: I did also.

PRESIDENT: Uh huh.

DETAINEE: I told him, I know him yes. There are and they are. Not even you show me. This I don't know him I never met him at all. So, unclassified which is both classified and unclassified so this is you know him you don't know him. You have to be fair with people. There are many many people which they have never been part of the Taliban. Afghanistan there have been many people arrested for example people who have been arrested after October 2001 after make attack against Afghanistan many of them just arrive after they don't what has happen. When Russian came to Afghanistan they felt they went back but they did anything with Taliban and al Qaida then came after that. I don't know why it was younger

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people same thing for Afghanis people they show Afghanis people. I will give example one. His name is Sayed Habib. This I remember. [REDACTED]

PRESIDENT: Alright.

PRESIDENT: Now what.

DETAINEE: For me nothing which was recorded. For which is written here is not related

PRESIDENT: I understand.

PRESIDENT: I do note that in one of the exhibits you indicate you are not under any pressure or duress today. Is that correct?

DETAINEE: That is about I'm hearing today. Yes.

PRESIDENT: So anything.

DETAINEE: Some of this information, I not state it to them.

PRESIDENT: The information that you are telling us today, so we are clear. You do not believe you are under any pressure or threat or duress to speak to us today, is that correct?

DETAINEE: Yes, that's correct.

PRESIDENT: Alright.

PRESIDENT: Now what you have told us about your previous treatment is on the record of these proceeding now and will be reported for any investigation that may be appropriate. Also, we will consider what you have told us in making our determination regarding your enemy combatant status.

DETAINEE: I hope you will take care of other Detainees with what I said. It's up to you.

PRESIDENT: I will do as I've said. I'll see to it that it is reported.

PRESIDENT: Alright. At this point, we are going to go into the final statement but I do want to give the opportunity to the Recorder, PR, and Tribunal member to ask questions if they would like. So, what will do is proceed then to the Detainee's final statement and then I'll have a question and answer session following that. Alright just give me a moment.

PRESIDENT: Alright.

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PRESIDENT: Khalid Sheikh Muhammad, this concludes the presentation of unclassified information to the Tribunal. We are about to conclude the unclassified portion of the hearing. Do you wish to now make any final statement to the Tribunal? You have the assistance of your PR.

DETAINEE: I make a two part. Maybe he will read then I will go also.

PRESIDENT: Very well. You may continue.

PERSONAL

REPRESENTATIVE: Mr. President, the Detainee has asked me to read his final statement to the Tribunal with the understanding he may interject or add statements if he needs to, to correct what I say. According to the Detainee:

"I hereby admit and affirm without duress to the following:

1. I swore Bay'at (i.e., allegiance) to Sheikh Usama Bin Laden to conduct Jihad of self and money, and also Hijrah (i.e., expatriation to any location in the world where Jihad is required).
2. I was a member of the Al Qaida Council.
3. I was the Media Operations Director for Al-Sahab, or 'The Clouds,' under Dr. Ayman Al-Zawahiri. Al-Sahab is the media outlet that provided Al-Qaida-sponsored information to Al Jazeera. Four."

DETAINEE: [speaking inaudibly to Personal Representative]

PRESIDENT: Please tell.

PERSONAL

REPRESENTATIVE: In other channels or other media outlets.

PRESIDENT: Thank you.

PERSONAL

REPRESENTATIVE: [continuing] "4. I was the Operational Director for Sheikh Usama Bin Laden for the organizing, planning, follow-up, and execution of the 9/11 Operation under the Military Commander, Sheikh Abu Hafs Al-Masri Subhi Abu Sittah.

5. I was the Military Operational Commander for all foreign operations around the world under the direction of Sheikh Usama Bin Laden and Dr. Ayman Al-Zawahiri.
6. I was directly in charge, after the death of Sheikh Abu Hafs Al-Masri Subhi Abu Sittah, of managing and following up on the Cell for the Production of Biological Weapons, such as anthrax and others, and following up on Dirty Bomb Operations on American soil.
7. I was Emir (i.e., commander) of Beit Al Shuhada (i.e., the Martyrs' House) in the state of Kandahar, Afghanistan, which housed the 9/11 hijackers. There I was responsible for their

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training and readiness for the execution of the 9/11 Operation. Also, I hereby admit and affirm without duress that I was a responsible participant, principal planner, trainer, financier (via the Military Council Treasury), executor, and/or a personal participant in the following:

1. I was responsible for the 1993 World Trade Center Operation.
2. I was responsible for the 9/11 Operation, from A to Z.
3. I decapitated with my blessed right hand the head of the American Jew, Daniel Pearl, in the city of Karachi, Pakistan. For those who would like to confirm, there are pictures of me on the Internet holding his head.
4. I was responsible for the Shoe Bomber Operation to down two American airplanes.
5. I was responsible for the Filka Island Operation in Kuwait that killed two American soldiers.
6. I was responsible for the bombing of a nightclub in Bali, Indonesia, which was frequented by British and Australian nationals.
7. I was responsible for planning, training, surveying, and financing the New (or Second) Wave attacks against the following skyscrapers after 9/11:
 - a. Library Tower, California.
 - b. Sears Tower, Chicago.
 - c. Plaza Bank, Washington state.
 - d. The Empire State Building, New York City.
8. I was responsible for planning, financing, & follow-up of Operations to destroy American military vessels and oil tankers in the Straights of Hormuz, the Straights of Gibraltar, and the Port of Singapore.
9. I was responsible for planning, training, surveying, and financing for the Operation to bomb and destroy the Panama Canal.
10. I was responsible for surveying and financing for the assassination of several former American Presidents, including President Carter.
11. I was responsible for surveying, planning, and financing for the bombing of suspension bridges in New York.
12. I was responsible for planning to destroy the Sears Tower by burning a few fuel or oil tanker trucks beneath it or around it.
13. I was responsible for planning, surveying, and financing for the operation to destroy Heathrow Airport, the Canary Wharf Building, and Big Ben on British soil.
14. I was responsible for planning, surveying, and financing for the destruction of many night clubs frequented by American and British citizens on Thailand soil.
15. I was responsible for surveying and financing for the destruction of the New York Stock Exchange and other financial targets after 9/11.
16. I was responsible for planning, financing, and surveying for the destruction of buildings in the Israeli city of Elat by using airplanes leaving from Saudi Arabia.
17. I was responsible for planning, surveying, and financing for the destruction of American embassies in Indonesia, Australia, and Japan.

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18. I was responsible for surveying and financing for the destruction of the Israeli embassy in India, Azerbaijan, the Philippines, and Australia.
19. I was responsible for surveying and financing for the destruction of an Israeli 'El-Al' Airlines flight on Thailand soil departing from Bangkok Airport.
20. I was responsible for sending several Mujahadeen into Israel to conduct surveillance to hit several strategic targets deep in Israel.
21. I was responsible for the bombing of the hotel in Mombasa that is frequented by Jewish travelers via El-Al airlines.
22. I was responsible for launching a Russian-made SA-7 surface-to-air missile on El-Al or other Jewish airliner departing from Mombasa.
23. I was responsible for planning and surveying to hit American targets in South Korea, such as American military bases and a few night clubs frequented by American soldiers.
24. I was responsible for financial, excuse me, I was responsible for providing financial support to hit American, Jewish, and British targets in Turkey.
25. I was responsible for surveillance needed to hit nuclear power plants that generate electricity in several U.S. states.
26. I was responsible for planning, surveying, and financing to hit NATO Headquarters in Europe.
27. I was responsible for the planning and surveying needed to execute the Bojinka Operation, which was designed to down twelve American airplanes full of passengers. I personally monitored a round-trip, Manila-to-Seoul, Pan Am flight.
28. I was responsible for the assassination attempt against President Clinton during his visit to the Philippines in 1994 or 1995.
29. I was responsible for the assassination attempt against Pope John Paul the second while he was visiting the Philippines."

DETAINEE: I was not responsible, but share.

PERSONAL

REPRESENTATIVE: I shared responsibility. I will restate number twenty nine.

29. "I shared responsibility for the assassination attempt against Pope John Paul the second while he was visiting the Philippines.
30. I was responsible for the training and financing for the assassination of Pakistan's President Musharaf.
31. I was responsible for the attempt to destroy an American oil company owned by the Jewish former Secretary of State, Henry Kissinger, on the Island of Sumatra, Indonesia."

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PERSONAL

REPRESENTATIVE: Sir, that concludes the written portion of the Detainee's final statement and as he has alluded to earlier he has some additional comments he would like to make.

PRESIDENT: Alright. Before you proceed, Khalid Sheikh Muhammad, the statement that was just read by the Personal Representative, were those your words?

BEGIN DETAINEE ORAL STATEMENT

DETAINEE: Yes. And I want to add some of this one just for some verification. It like some operations before I join al Qaida. Before I remember al Qaida which is related to *Bajinka Operation* I went to destination involve to us in 94, 95. Some Operations which means out of al Qaida. It's like beheading Daniel Pearl. It's not related to al Qaida. It was shared in Pakistani. Other group, Mujahadeen. The story of Daniel Pearl, because he stated for the Pakistanis, group that he was working with the both. His mission was in Pakistan to track about Richard Reed trip to Israel. Richard Reed, do you have trip? You send it Israel to make set for targets in Israel. His mission in Pakistan from Israeli intelligence, Mosad, to make interview to ask about when he was there. Also, he mention to them he was both. He have relation with CIA people and were the Mosad. But he was not related to al Qaida at all or UBL. It is related to the Pakistan Mujahadeen group. Other operations mostly are some word I'm not accurate in saying. I'm responsible but if you read the heading history. The line there [Indicating to Personal Representative a place on Exhibit D-c].

PERSONAL

REPRESENTATIVE: [Reading] "Also, hereby admit and affirm without duress that I was a responsible participant, principle planner, trainer, financier."

DETAINEE: For this is not necessary as I responsible, responsible. But with in these things responsible participant in finances.

PRESIDENT: I understand. I want to be clear, though, is you that were the author of that document.

DETAINEE: That's right.

PRESIDENT: That it is true?

DETAINEE: That's true.

PRESIDENT: Alright. You may continue with your statement.

DETAINEE: Okay. I start in Arabic.

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PRESIDENT: Please.

DETAINEE

(through translator): In the name of God the most compassionate, the most merciful, and if any fail to retaliation by way of charity and, I apologize. I will start again. And if any fail to judge by the light of Allah has revealed, they are no better than wrong doers, unbelievers, and the unjust.

DETAINEE: For this verse, I not take the oath. Take an oath is a part of your Tribunal and I'll not accept it. To be or accept the Tribunal as to be, I'll accept it. That I'm accepting American constitution, American law or whatever you are doing here. This is why religiously I cannot accept anything you do. Just to explain for this one, does not mean I'm not saying that I'm lying. When I not take oath does not mean I'm lying. You know very well peoples take oath and they will lie. You know the President he did this before he just makes his oath and he lied. So sometimes when I'm not making oath does not mean I'm lying.

PRESIDENT: I understand.

DETAINEE: Second thing. When I wrote this thing, I mean, the PR he told me that President may stop you at anytime and he don't like big mouth nor you to talk too much. To be within subject. So, I will try to be within the enemy combatant subject

PRESIDENT: You can say whatever you'd like to say so long as it's relevant to what we are discussing here today.

DETAINEE: Okay, thanks.

DETAINEE: What I wrote here, is not I'm making myself hero, when I said I was responsible for this or that. But your are military man. You know very well there are language for any war. So, there are, we are when I admitting these things I'm not saying I'm not did it. I did it but this the language of any war. If America they want to invade Iraq they will not send for Saddam roses or kisses they send for a bombardment. This is the best way if I want. If I'm fighting for anybody admit to them I'm American enemies. For sure, I'm American enemies. Usama bin Laden, he did his best press conference in American media. Mr. John Miller he been there when he made declaration against Jihad, against America. And he said it is not no need for me now to make explanation of what he said but mostly he said about American military presence in Arabian peninsula and aiding Israel and many things. So when we made any war against America we are jackals fighting in the nights. I consider myself, for what you are doing, a religious thing as you

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consider us fundamentalist. So, we derive from religious leading that we consider we and George Washington doing same thing. As consider George Washington as hero. Muslims many of them are considering Usama bin Laden. He is doing same thing. He is just fighting. He needs his independence. Even we think that, or not me only. Many Muslims, that al Qaida or Taliban they are doing. They have been oppressed by America. This is the feeling of the prophet. So when we say we are enemy combatant, that right. We are. But I'm asking you again to be fair with many Detainees which are not enemy combatant. Because many of them have been unjustly arrested. Many, not one or two or three. Cause the definition you which wrote even from my view it is not fair. Because if I was in the first Jihad times Russia. So I have to be Russian enemy. But America supported me in this because I'm their alliances when I was fighting Russia. Same job I'm doing. I'm fighting. I was fighting there Russia now I'm fighting America. So, many people who been in Afghanistan never live. Afghanistan stay in but they not share Taliban or al Qaida. They been Russian time and they cannot go back to their home with their corrupted government. They stayed there and when America invaded Afghanistan parliament. They had been arrest. They never have been with Taliban or the others. So many people consider them as enemy but they are not. Because definitions are very wide definition so people they came after October of 2002, 2001. When America invaded Afghanistan, they just arrive in Afghanistan cause they hear there enemy. They don't know what it means al Qaida or Usama bin Laden or Taliban. They don't care about these things. They heard they were enemy in Afghanistan they just arrived. As they heard first time Russian invade Afghanistan. They arrive they fought when back than they came. They don't know what's going on and Taliban they been head of government. You consider me even Taliban even the president of whole government. Many people they join Taliban because they are the government. When Karzai they came they join Karzai when come they join whatever public they don't know what is going on. So, many Taliban fight even the be fighters because they just because public. The government is Taliban then until now CIA don't have exactly definition well who is Taliban, who is al Qaida. Your Tribunal now are discussing he is enemy or not and that is one of your jobs. So this is why you find many Afghanis people, Pakistanis people even, they don't know what going on they just hear they are fighting and they help Muslim in Afghanistan. Then what. There are some infidels which they came here and they have to help them. But then there weren't any intend to do anything against America. Taliban themselves between Taliban they said Afghanistan which they never again against 9/11 operation. The rejection between senior of Taliban of what al Qaida are doing. Many of Taliban rejected what they are doing. Even many Taliban, they not agree about why we are in Afghanistan. Some of them they have been with us. Taliban never in their life at all before America invade them the intend to do anything against America. They never been with al Qaida. Does not mean we are

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here as American now. They gave political asylum for many countries. They gave for Chinese oppositions or a North Korean but that does not mean they are with them same thing many of Taliban. They harbor us as al Qaida does not mean we are together. So, this is why I'm asking you to be fair with Afghans and Pakistanis and many Arabs which been in Afghanistan. Many of them been unjustly. The funny story they been Sunni government they sent some spies to assassinate UBL then we arrested them sent them to Afghanistan/Taliban. Taliban put them into prison. Americans they came and arrest them as enemy combatant. They brought them here. So, even if they are my enemy but not fair to be there with me. This is what I'm saying. The way of the war, you know, very well, any country waging war against their enemy the language of the war are killing. If man and woman they be together as a marriage that is up to the kids, children. But if you and me, two nations, will be together in war the others are victims. This is the way of the language. You know 40 million people were killed in World War One. Ten million kill in World War. You know that two million four hundred thousand be killed in the Korean War. So this language of the war. Any people who, when Usama bin Laden say I'm waging war because such such reason, now he declared it. But when you said I'm terrorist, I think it is deceiving peoples. Terrorists, enemy combatant. All these definitions as CIA you can make whatever you want. Now, you told me when I ask about the witnesses, I'm not convinced that this related to the matter. It is up to you. Maybe I'm convinced but your are head and he [gesturing to Personal Representative] is not responsible, the other, because your are head of the committee. So, finally it's your war but the problem is no definitions of many words. It would be widely definite that many people be oppressed. Because war, for sure, there will be victims. When I said I'm not happy that three thousand been killed in America. I feel sorry even. I don't like to kill children and the kids. Never Islam are, give me green light to kill peoples. Killing, as in the Christianity, Jews, and Islam, are prohibited. But there are exception of rule when you are killing people in Iraq. You said we have to do it. We don't like Saddam. But this is the way to deal with Saddam. Same thing you are saying. Same language you use, I use. When you are invading two-thirds of Mexican, you call your war manifest destiny. It up to you to call it what you want. But other side are calling you oppressors. If now George Washington. If now we were living in the Revolutionary War and George Washington he being arrested through Britain. For sure he, they would consider him enemy combatant. But American they consider him as hero. This right the any Revolutionary War they will be as George Washington or Britain. So we are considered American Army bases which we have from seventies in Iraq. Also, in the Saudi Arabian, Kuwait, Qatar, and Bahrain. This is kind of invasion, but I'm not here to convince you. Is not or not but mostly speech is ask you to be fair with people. I'm don't have anything to say that I'm not enemy. This is why the language of any war in the

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world is killing. I mean the language of the war is victims. I don't like to kill people. I feel very sorry they been killed kids in 9/11. What I will do? This is the language. Sometime I want to make great awakening between American to stop foreign policy in our land. I know American people are torturing us from seventies. [REDACTED] I know they talking about human rights. And I know it is against American Constitution, against American laws. But they said every law, they have exceptions, this is your bad luck you been part of the exception of our laws. They got have something to convince me but we are doing same language. But we are saying we have Sharia law, but we have Koran. What is enemy combatant in my language?

DETAINEE

(through translator): Allah forbids you not with regards to those who fight you not for your faith nor drive you out of your homes from dealing kindly and justly with them. For Allah love those who are just. There is one more sentence. Allah only forbids you with regards to those who fight you for your faith and drive you out of your homes and support others in driving you out from turning to them for friendship and protection. It is such as turn to them in these circumstances that do wrong.

DETAINEE:

So we are driving from whatever deed we do we ask about Koran or Hadith. We are not making up for us laws. When we need Fatwa from the religious we have to go back to see what they said scholar. To see what they said yes or not. Killing is prohibited in all what you call the people of the book. Jews, Judaism, Christianity, and Islam. You know the Ten Commandments very well. The Ten Commandments are shared between all of us. We all are serving one God. Then now kill you know it very well. But war language also we have language for the war. You have to kill. But you have to care if unintentionally or intentionally target if I have if I'm not at the Pentagon. I consider it is okay. If I target now when we target in USA we choose them military target, economical, and political. So, war central victims mostly means economical target. So if now American they know UBL. He is in this house they don't care about his kids and his. They will just bombard it. They will kill all of them and they did it. They kill wife of Dr. Ayman Zawahiri and his two daughters and his son in one bombardment. They receive a report that is his house be. He had not been there. They killed them. They arrested my kids intentionally. They are kids. They been arrested for four months they had been abused. So, for me I have patience. I know I'm not talk about what's come to me. The American have human right. So, enemy combatant itself, it flexible word. So I think God knows that many who been arrested, they been unjustly arrested. Otherwise, military throughout history know very well. They don't war will never stop. War start from Adam when Cain he killed Abel until now. It's never gonna stop killing of people. This is the

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way of the language. American start the Revolutionary War then they starts the Mexican then Spanish War then World War One, World War Two. You read the history. You know never stopping war. This is life. But if who is enemy combatant and who is not? Finally, I finish statement. I'm asking you to be fair with other people.

PRESIDENT: Does that conclude your statement, Khalid Sheikh Muhammad?

DETAINEE: Yes.

PRESIDENT: Alright.

DETAINEE QUESTION & ANSWER

PRESIDENT: Does the Personal Representative have any questions for the Detainee based on his statement?

PERSONAL
REPRESENTATIVE: No, Sir.

PRESIDENT: Does the Recorder have any questions for the Detainee?

RECORDER: No, Sir.

PRESIDENT: Do either of the Tribunal members wish to question the Detainee?

MEMBERS: No, sir. Nothing further Sir.

PRESIDENT: Alright.

CLOSING UNCLASSIFIED SESSION

PRESIDENT: All unclassified evidence having been provided to the Tribunal, this concludes the open tribunal session.

PRESIDENT: Khalid Sheikh Muhammad, you shall be notified of the Tribunal decision upon completion of the review of these proceed by the Combatant Status Review Tribunal convening authority in Washington, D.C. If, the Tribunal determines that you should not be classified as an enemy combatant, you will be released to your home country as soon as arrangements can be made. If however, the Tribunal determines your classification as an enemy combatant you may be eligible for an Administrative Review Board hearing at a future date.

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- PRESIDENT: The Administrative Review Board will make an assessment of whether there is continued reason to believe that you pose a threat to the United States or its coalition partners in the ongoing armed conflict against terrorist organizations such as al Qaeda and its affiliates and supporters or whether there are other factors bearing upon the need for continued detention.
- PRESIDENT: You will have the opportunity to be heard and to present relevant information to the Administrative Review Board. You can present information from your family and friends that might help you at that Board. You are encouraged to contact them as soon as possible to begin to gather information that may help you.
- PRESIDENT: A military officer will be assigned at a later date to assist you in the Administrative Review Board process.

ADJOURN OPEN SESSION

- PRESIDENT: The open session of this Tribunal hearing is adjourned.
- RECORDER: The time is 2:43pm. The date is 10 March 2007.
- RECORDER: All Rise.

[The Tribunal withdrew from the hearing room]

AUTHENTICATION

I certify the material contained in this transcript is a true and accurate verbatim rendering of the testimony and English language translation of Detainee's words given during the open session of the Combatant Status Review Tribunal of ISN 10024.

[REDATED]
CAPT JAGC USN
Tribunal President

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Enclosure (3)
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UNCLASSIFIED

Attachment E

UNCLASSIFIED

Department of Defense
Office for the Administrative Review of the Detention of Enemy
Combatants at U.S. Naval Base Guantanamo Bay, Cuba

08 February 2007

TO: Personal Representative

FROM: OIC, CSRT (08 Feb 07)

SUBJECT: SUMMARY OF EVIDENCE FOR COMBATANT STATUS REVIEW
TRIBUNAL – MUHAMMAD, KHALID SHAYKH

1. Under the provisions of the Deputy Secretary of Defense Memorandum, dated 14 July 2006, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at U.S. Naval Base Guantanamo Bay, Cuba*, a Tribunal has been appointed to determine if the detainee is an enemy combatant.

2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."

3. The following facts support the determination that the detainee is an enemy combatant.

a. On the morning of 11 September 2001, four airliners traveling over the United States were hijacked. The flights hijacked were: American Airlines Flight 11, United Airlines Flight 175, American Airlines Flight 77, and United Airlines Flight 93. At approximately 8:46 a.m., American Airlines Flight 11 crashed into the North Tower of the World Trade Center, resulting in the collapse of the tower at approximately 10:25 a.m. At approximately 9:05 a.m., United Airlines Flight 175 crashed into the South Tower of the World Trade Center, resulting in the collapse of the tower at approximately 9:55 a.m. At approximately 9:37 a.m., American Airlines Flight 77 crashed into the southwest side of the Pentagon in Arlington, Virginia. At approximately 10:03 a.m., United Airlines Flight 93 crashed in Stoney Creek Township, Pennsylvania. These crashes and subsequent damage to the World Trade Center and the Pentagon resulted in the deaths of 2,972 persons in New York, Virginia, and Pennsylvania.

b. The detainee served as the head of the al Qaida military committee and was Usama bin Laden's principal al Qaida operative who directed the 11 September 2001 attacks in the United States.

c. In an interview with an al Jazeera reporter in June 2002, the detainee stated he was the head of the al Qaida military committee.

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d. A computer hard drive seized during the capture of the detainee contained information about the four airplanes hijacked on 11 September 2001 including code names, airline company, flight number, target, pilot name and background information, and names of the hijackers.

e. A computer hard drive seized during the capture of the detainee contained photographs of 19 individuals identified as the 11 September 2001 hijackers.

f. A computer hard drive seized during the capture of the detainee contained a document that listed the pilot license fees for Mohammad Atta and biographies for some of the 11 September 2001 hijackers.

g. A computer hard drive seized during the capture of the detainee contained images of passports and an image of Mohammad Atta.

h. A computer hard drive seized during the capture of the detainee contained transcripts of chat sessions belonging to at least one of the 11 September 2001 hijackers.

i. The detainee directed an individual to travel to the United States to case targets for a second wave of attacks.

j. A computer hard drive seized during the capture of the detainee contained three letters from Usama bin Laden.

k. A computer hard drive seized during the capture of the detainee contained spreadsheets that describe money assistance to families of known al Qaida members.

l. The detainee's name was on a list in a computer seized in connection with a threat to United States airlines, United States embassies and the Pope.

m. The detainee wrote the *bojinka plot*, the airline bomb plot which was later found on his nephew Ramzi Yousef's computer.

n. The *bojinka plot* is also known as the Manila air investigation.

o. The Manila air investigation uncovered the detainee conspired with others to plant explosive devices aboard American jetliners while those aircraft were scheduled to be airborne and loaded with passengers on their way to the United States.

p. The detainee was in charge of and funded an attack against United States military vessels heading to the port of Djibouti.

q. A computer hard drive seized during the capture of the detainee contained a letter to the United Arab Emirates threatening attack if their government continued to help the United States.

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**SUBJECT: SUMMARY OF EVIDENCE FOR COMBATANT STATUS REVIEW
TRIBUNAL – MUHAMMAD, KHALID SHAYKH**

r. During the capture of the detainee, information used exclusively by al Qaida operational managers to communicate with operatives was found.

s. The detainee received funds from Kuwaiti-based Islamic extremist groups and delivered the funds to al Qaida members.

t. A computer hard drive seized during the capture of the detainee contained a document that summarized operational procedures and training requirements of an al Qaida cell.

u. A computer hard drive seized during the capture of the detainee contained a list of killed and wounded al Qaida martyrs.

v. Passport photographs of al Qaida operatives were seized during the capture of the detainee.

4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant and that is deemed relevant to that issue. The Tribunal President will determine the reasonable availability and relevance of evidence or witnesses.

Attachment F

UNITED STATES OF AMERICA,)
)
vs.)
)
KHALID SHEIKH MOHAMMED, *et. al*)
)
)
)
_____)

DECLARATION OF
KATHERINE STONE
NEWELL

I, KATHERINE STONE NEWELL, being first duly sworn upon oath, hereby say:

1. I am an attorney, employed in the Office of the Chief Defense Counsel, Office of Military Commissions since November, 2007. In this capacity, I serve as a subject matter resource on the subject of torture and other forms of cruel, inhuman, and degrading treatment. From October 2005 to March 2007, I was the Counterterrorism Counsel for the U.S. Program of Human Rights Watch. In both capacities, I have reviewed numerous open source documents relating to U.S. detention and interrogation operations.
2. I was graduated *cum laude* from the Washington College of Law at American University in 2000 and am licensed to practice in the State of New York. I obtained my undergraduate degree from Virginia Tech in 1990. From 1991 to 1996, I served as an officer in the U.S. Air Force (final rank, Captain).
3. I am not detailed to any case currently before the Military Commissions and do not have an attorney-client relationship with any detainee charged in the case of *U.S. v. Mohammed*. I affirmatively assert that nothing in this affidavit is based on classified information or any information obtained directly from an accused or from counsel for any accused.
4. Based on the above, on information and belief I acquired through current and previous employment, the narrative below applies to the detainees charged in the case of *U.S. v. Mohammed*.

A SPECIAL CIA PROGRAM FOR SENIOR AL QAEDA SUSPECTS

5. Reports that suspected al Qaeda operatives were being held by the CIA in undisclosed locations abroad began circulating in 2002.¹ By 2004, a number of suspected al Qaeda

¹ See, for example, "Getting al Qaeda to talk," CNN.com, September 17, 2002 (discussing the detention of Ramzi bin al-Shibh and Omar al-Faruq) available at <http://archives.cnn.com/2002/US/09/17/bergen.ots/index.html>; "'Appropriate pressure' being put on al Qaeda leader," CNN.com, March 3, 2003 (stating that CIA had brought

operatives were declared by human rights advocates to have been “disappeared” by the U.S. government.^{2,3} In September of 2006, the President announced the transfer of the detainees charged in the case of *U.S. v. Mohammed* and others to Guantanamo after they had been held in great secrecy and subjected to “an alternative set of [interrogation] procedures” outside the United States in a separate program operated by the CIA.⁴

6. The covert CIA program referred to by the President was authorized under a classified Presidential finding signed on September 17, 2001, which reportedly gave the CIA broad powers to kill, capture, detain and interrogate suspected al Qaeda leaders and their associates. President Bush reportedly signed a new executive order in 2007 after the Supreme Court ruled in 2006 that the Geneva Conventions applied to prisoners who belonged to al Qaeda.⁵

Khalid Shaikh Mohammed, who was arrested in Pakistan, to an undisclosed location outside of the United States) available at <http://www.cnn.com/2003/WORLD/asiapcf/south/03/02/pakistan.arrests/index.html>.

² With the exception of Mr. al Baluchi, all the accused were among those listed as “disappeared” by Human Rights Watch by October 2004. See http://www.hrw.org/backgrounders/usa/us1004/7.htm#_Toc84652978. Mr. Baluchi was later added to this list. See also Human Rights Watch, *The United States’ “Disappeared”: The CIA’s Long-Term “Ghost Detainees”* (October 2004); Amnesty International et. al., *Off the Record, U.S. Responsibility for Enforced Disappearances in the “War on Terror”* (2007).

³ A “disappearance” is an unlawful detention in which the detaining authorities deny holding the person or refuse to disclose his or her whereabouts. Under international law, “forced disappearances” are considered one of the most serious violations of the fundamental rights of human beings, as well as an “offence to human dignity” and “a grave and abominable offense against the inherent dignity of the human being.” See, respectively, United Nations General Assembly, “Declaration on the Protection of All Persons from Enforced Disappearances” (Geneva: United Nations, 1992), A/RES/47/133, art. 1; Organization of American States, “Inter-American Convention on Forced Disappearance of Persons,” 2003, Preamble, para. 3. 13. Louise Arbour, United Nations High Commissioner for Human Rights, said in an article in *Le Monde* published on 7 December 2005 that secret detention was a form of torture in itself, for the person detained, who was at the mercy of the detaining authorities, and, worse still, for the families, who were faced with a situation that amounted to that of a missing person. Quoted in Eur. Parl. Ass., *Comm. on Legal Aff. and Hum. Rts., Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*, para. 13., 17th Sitting, Doc. No. 10957 (2006) at 9-19, available at <http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf>.

⁴ See President Discusses Creation of Military Commissions to Try Suspected Terrorists, Office of the Press Secretary, The White House, September 6, 2006, available at <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html> (President Bush stating that “In addition to the terrorists held at Guantanamo, a small number of suspected terrorist leaders and operatives captured during the war have been held and questioned outside the United States, in a separate program operated by the Central Intelligence Agency.”) See also Announcement, Office of the Director of National Intelligence, *Summary of the High Value Terrorist Detainee Program*, undated (ODNI discussing the capture of Abu Zubaydah in March 2002 and stating that “Over the ensuing months, the CIA designed a new interrogation program...”), available at <http://www.fas.org/irp/news/2006/09/hivaluedetainees.pdf>.

⁵ See Scott Shane, David Johnston, & James Risen, *Secret U.S. Endorsement of Severe Interrogations*, N.Y. Times, Oct. 4, 2007, available at <http://www.nytimes.com/2007/10/04/washington/04interrogate.html>.

7. Practices associated with the CIA's expanded powers include the use of extra-judicial renditions; secret capture and detention of suspects, high-value and otherwise;⁶ 'proxy' detention and interrogation of suspects by foreign governments; and detention conditions and interrogation techniques⁷ traditionally considered unlawful and possibly torture.⁸ Detainees charged in the case of *U.S. v. Mohammed* were held in a separate "high-value detainee" program which was a specific part of the CIA's broader detention and interrogation operations, and was not discontinued when they were transferred to military custody in September 2006.

8. Given the secrecy surrounding the program, open source information from current and former detainees about their treatment in any tier of CIA custody remains limited. However, while details remain classified, the information about CIA detention and interrogation practices that is publically available depicts a regime in which extremely coercive treatment was considered legal, necessary, and proper, as described below.

9. The "high-value detainee" program was authorized to use extreme measures to control and interrogate detainees. Detainees in this program were reportedly subjected to prolonged periods of isolation, multiple sophisticated psychological manipulations, and mental or physical pain or suffering through techniques chosen to minimize physical evidence of abuse. The purported purpose of this regimen was to overcome a subject's resistance to interrogation by dismantling his identity and personality.⁹ According to a source reportedly familiar with the methods, "the basic approach was to "break down [the detainees] through isolation, white noise, completely take away their ability to predict the future, create dependence on interrogators."¹⁰

⁶ It appears the CIA operated at least two tiers of detention. The first was for major terrorism suspects "held under the highest level of secrecy at black sites financed by the CIA and managed by agency personnel, including those in Eastern Europe and elsewhere..." Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post, Nov. 2, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html>. Another was for detainees who were considered less important, and who may have been taken to CIA-run "black sites", rendered to foreign countries for detention in jails operated by the host nations, or held in US military facilities with CIA support or direction. *Id.*

⁷ Forms of treatment that may be considered part of an interrogation or a component of detainee management or discipline include but are not limited to: isolation; dietary or environmental manipulation; forced grooming; removal of clothing or comfort items; sleep deprivation; hooding and shackling; frequent body cavity searches and the use of suppositories. Regardless of whether a form of treatment is considered part of interrogation, punishment, or detainee management or discipline, it may singly or in combination constitute prohibited mistreatment.

⁸ For the purposes of this affidavit, this author will not categorically state whether a form of treatment or a specific course of treatment constituted torture or not.

⁹ See, e.g., Jane Mayer, *The Black Sites: A rare look inside the C.I.A.'s secret interrogation program*, The New Yorker, Aug. 13, 2007.

¹⁰ Katherine Eban, *Rorschach and Awe*, Vanity Fair, July 17, 2007. See also Jane Mayer, *The Black Sites*, The New Yorker, August 13, 2007, ("They were very arrogant, and pro-torture," a European official knowledgeable about the program said. "They sought to render the detainees vulnerable—to break down all of their senses. It takes a psychologist trained in this to understand these rupturing experiences.").

10. As subjects of “high-value detainee” program, the detainees charged in the case of *U.S. v. Mohammed* were held in long-term incommunicado detention in secret locations (or “black sites”) for some *three and half to four years* before their transfer to Guantanamo,¹¹ during which the United States refused to disclose their whereabouts and refused to allow them access to their families, lawyers or the International Committee of the Red Cross.

A MODEL FOR CIA INTERROGATION

11. Numerous allegations of mistreatment generally comport with the reported genesis of the CIA’s interrogation program. The CIA allegedly turned to psychologists involved in training U.S. personnel how to resist coercive interrogation for advice on what might “break” captives resistant to questioning.¹² Sources report the program’s coercive procedures were “reverse-engineered” for the purposes of eliciting information from procedures designed to train US personnel how to withstand interrogation, specifically, techniques utilized by U.S. government instructors in survival training meant to help U.S. personnel prepare for possible detention by captors who would not adhere to the Geneva Conventions. The program was commonly referred to SERE training, from the acronym for “survival, evasion, resistance, and escape”, and was based in part on studies of North Korean and Chinese practices designed to compel confessions from American prisoners.¹³

12. The CIA program’s supporters reportedly believed these origins gave coercive techniques scientific credibility, making it more likely they would be employed.

13. SERE training is designed to expose a student to a form of “controlled realism” that will prepare him or her for captivity through “stress inoculation” and “stress resolution”.¹⁴ SERE

¹¹ Open sources report that Mr. bin al Shihb was arrested in September of 2002, and that the other detainees charged in the case of *U.S. v. Mohammed* were arrested in March or April of 2003.

¹² See., e.g., Katherine Eban, *Rorschach and Awe*, Vanity Fair, July 17, 2007, (“Psychologists, working in secrecy, had actually designed the tactics and trained interrogators in them while on contract to the C.I.A.”); JANE MAYER, *THE DARK SIDE* (2008). Advocates who work with victims of torture note that a victim’s mental suffering can be compounded by the belief that medical personnel know about and condone his or her treatment.

¹³ A recent Congressional investigation revealed that SERE instructors sent to Guantanamo in December 2002 to train military interrogators on “interrogation fundamental and resistance to interrogation” provided them with a chart of “Coercive Management Techniques” that was, in fact, copied verbatim from a 1957 Air Force study of Chinese Communist techniques used during the Korean War to obtain confessions from American prisoners, many of them false. Scott Shane, *China Inspired Interrogations at Guantánamo*, N.Y. Times, July 2, 2008.

¹⁴ See generally July 25, 2002 document entitled “Physical Pressures used in Resistance Training and Against American Prisoners and Detainees” attached to July 25, 2002 Memorandum from Joint Personnel Recovery Agency Chief of Staff to Office of the Secretary of Defense General Counsel, Subject: Exploitation, released at Tab 3 of documents accompanying *The Origins of Aggressive Interrogation Techniques: Part I of the Committee’s inquiry into the treatment of detainees into U.S. custody*, United States Senate Committee on Armed

experts note that “too much” pressure on students can induce “learned helplessness”, the point at which stress and duress is no longer a beneficial inoculant to interrogation, but will create vulnerabilities that interrogators can exploit to overcome resistance.¹⁵ News reports describe former SERE instructors working with the CIA as contractors to develop its interrogation program as strong proponents of the “learned helplessness” model to break detainees.¹⁶

14. Techniques used by the Department of Defense and/or military service SERE programs include but are not limited to:¹⁷ waterboarding;¹⁸ shaking and manhandling, to include “walling”¹⁹ or “grounding”²⁰; slapping; forced stress positions, possibly with threat of punishment for failure; close confinement; isolation; induced physical weakness and exhaustion; “degradation” and “conditioning”; sensory deprivation;²¹ sensory overload;²² disruption of sleep and biorhythms; and manipulation of diet, nutrients, and vitamins as a way to impact general health and emotional state.

15. This list echoes practices reportedly authorized for and used by the CIA, as described below.

Services (June 17, 2008), available at

<http://levin.senate.gov/newsroom/supporting/2008/Documents.SASC.061708.pdf>.

¹⁵ “If too much physical pressure is applied, the student is made vulnerable to the effects of learned helplessness, which will render him/her less prepared for captivity ...”. *Id.*

¹⁶ Jane Mayer, *The Black Sites: A rare look inside the C.I.A.’s secret interrogation program*, *The New Yorker*, Aug. 13, 2007.

¹⁷ In addition to noted sources, this list and the descriptions are from July 25, 2002 document entitled “Physical Pressures used in Resistance Training and Against American Prisoners and Detainees” attached to July 25, 2002 Memorandum from Joint Personnel Recovery Agency Chief of Staff to Office of the Secretary of Defense General Counsel, Subject: Exploitation, released at Tab 3 of documents accompanying *The Origins of Aggressive Interrogation Techniques: Part I of the Committee’s inquiry into the treatment of detainees into U.S. custody*, United States Senate Committee on Armed Services (June 17, 2008), available at <http://levin.senate.gov/newsroom/supporting/2008/Documents.SASC.061708.pdf>.

¹⁸ The CIA’s use of the waterboarding procedure was reportedly adapted directly from SERE training. See Opening Statement of Senator Carl Levin before the Senate Armed Services Committee’s inquiry into the treatment of detainees in U.S. custody, citing earlier testimony of Steven Bradbury, the current Assistant Attorney General of the OLC, before the House Judiciary Committee. *The Origins of Aggressive Interrogation Techniques: Part I of the Committee’s Inquiry into the Treatment of Detainees in U.S. Custody*, 110 Cong. 8 (2008) (June 17, 2008 Opening Statement of Senator Carl Levin).

¹⁹ Quickly and firmly pushing the student numerous times into the wall with a towel or other lead around the neck.

²⁰ Quickly and firmly pushing the student numerous times into the ground.

²¹ “When a subject is deprived of sensory input for an interrupted period, for approximately 6-8 hours, it is not uncommon for them to experience visual, auditory and/or tactile hallucinations. If deprived of input, the brain will make it up. This tactic is used in conjunction with other methods to promote dislocation of expectations and induce emotions.”

²² “This includes being constantly exposed to bright, flashing lights, loud music, annoying / irritating sounds, etc. This tactic elevates the agitation level of a person and increases their emotionality, as well as enhances the effects of isolation.”

ASSURANCES THAT EXTREME TREATMENT WAS LAWFUL

16. At various times the CIA sought legal opinions from the Office of Legal Counsel (OLC) of the Department of Justice concerning the legality of detention and interrogation practices used by its officers. Not all these legal opinions have yet been released, or even publically acknowledged.²³ It appears that, as Congress and the courts took steps reasserting or expanding legal limits on detainee abuse, the Administration took steps to maintain the CIA's detention and interrogation powers, including the development of additional secret legal guidance.

17. The OLC legal opinions that are publically available indicate that at various times the CIA operated under assurances that some or all domestic and international legal limits on torture and other forms of cruel, inhuman or degrading treatment did not apply to the treatment of alien detainees held overseas by the CIA. In effect, CIA officials were given permission to subject detainees to treatment and conditions considered torture under traditional interpretations of U.S. and international law, and, literally, treatment and conditions considered torture under its own interpretation if so ordered by the President.²⁴

18. For example, one 2002 OLC legal opinion redefined "torture" to include only the most extreme forms of pain and suffering. The opinion stated that for an act to constitute torture, it must inflict pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death."²⁵ "Torture" did not include treatment that resulted in "mental suffering" without "pain", and did not include mental

²³ For an example of some OLC opinions known to exist but yet to be made available to the public or to Congress, see Letter for Fred Fielding, Counsel to the President, from Senators Patrick Leahy and Arlen Specter, Re: Outstanding Requests for Information and Documents Concerning Legal Analysis and Advice from the Department of Justice's Office of Legal Counsel Related to the Administration's Detention and Interrogation Policies, August 19, 2008, available at http://www.fas.org/irp/congress/2008_cr/leahy081908.pdf.

²⁴ For a period between 2002 and 2004, known OLC guidance posited that US interrogators were permitted to use even torture with Presidential authorization. Memorandum for Alberto R. Gonzales, Counsel to the President. From Office of Legal Counsel, US Department of Justice. Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340–2340A. August 1, 2002 ("Even if an interrogation method arguably were to violate Section 2340A, the statute would be unconstitutional if it impermissibly encroached on the President's constitutional powers to conduct a military campaign ... Any effort to apply Section 2340A in a manner that interferes with the President's direction of such core war matters as the detention and interrogation of enemy combatants thus would be unconstitutional."). This opinion was withdrawn in June 2004 and replaced with another known OLC opinion on December 30, 2004, which did not reach this point. Memorandum for James B. Comey, Deputy Attorney General. From Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice. December 30, 2004. It is not known if any other OLC guidance has been issued on this point.

²⁵ Memorandum for Alberto R. Gonzales, Counsel to the President. From Office of Legal Counsel, US Department of Justice. Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340–2340A. August 1, 2002.

pain and suffering that did not result in significant psychological harm lasting for months or even years.²⁶ In 2004, when OLC repudiated this particular memorandum, the new opinion reasserted a more traditional definition of *physical* torture, but possibly narrowed the definition of *psychological* torture even further. Commentators have expressed particular concern that the 2004 memorandum said Congress did not intend to specifically prohibit four practices listed in the federal anti-torture statute as examples of severe mental pain or suffering, and these practices therefore did not necessarily constitute torture unless they actually resulted in prolonged mental harm to the specific victim in question – an analysis that can only occur after the harm has been done.²⁷ These four practices are:

(A) The intentional infliction or threatened infliction of severe physical pain or suffering;

(B) The administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) The threat of imminent death; or

(D) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.²⁸

EXTREME TREATMENT IN PRACTICE

19. Open source information suggests how the CIA put OLC legal guidance, known and unknown, into practice. CIA sources have reportedly described “enhanced interrogation techniques” instituted in mid-March 2002 and used on CIA detainees singly and in combination that include but are not limited to shaking, body and face slaps, forced standing, sleep deprivation, exposure to cold, waterboarding, isolation and nudity.²⁹ In January 2003,

²⁶ A companion memorandum to this 2002 opinion reportedly outlined specific methods the CIA could use. See Memorandum for [REDACTED] From Office of Legal Counsel, US Department of Justice. Re: Interrogation of [REDACTED], August 1, 2002, available at http://www.aclu.org/pdfs/safefree/cia_3686_001.pdf. An unredacted version of this memorandum is not publically available.

²⁷ Physicians for Human Rights, *Break them Down: Systematic Use of Psychological Torture by U.S. Forces* (2005), pp 76 et seq, available at <http://physiciansforhumanrights.org/library/documents/reports/break-them-down-the.pdf>.

²⁸ 18 U.S.C. §§ 2340-2340(A).

²⁹ One source described six techniques:

1. The Attention Grab: The interrogator forcefully grabs the shirt front of the prisoner and shakes him.

then-CIA Director George Tenet issued a policy directive that shows the CIA planned for the use of forms of interrogation more extreme than “enhanced interrogation techniques.”³⁰

20. CIA officers reportedly combined multiple forms of treatment. CIA officers reportedly sought the Agency’s legal advice about the application of specific combinations, concerned about the effect of combining techniques.³¹ Sources told ABC News that senior Bush

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2. Attention Slap: An open-handed slap aimed at causing pain and triggering fear.
 3. The Belly Slap: A hard open-handed slap to the stomach. The aim is to cause pain, but not internal injury. Doctors consulted advised against using a punch, which could cause lasting internal damage.
 4. Long Time Standing: This technique is described as among the most effective. Prisoners are forced to stand, handcuffed and with their feet shackled to an eye bolt in the floor for more than 40 hours. Exhaustion and sleep deprivation are effective in yielding confessions.
 5. The Cold Cell: The prisoner is left to stand naked in a cell kept near 50 degrees. Throughout the time in the cell the prisoner is doused with cold water.
 6. Water Boarding: The prisoner is bound to an inclined board, feet raised and head slightly below the feet. Cellophane is wrapped over the prisoner’s face and water is poured over him. Unavoidably, the gag reflex kicks in and a terrifying fear of drowning leads to almost instant pleas to bring the treatment to a halt.

CIA’s Harsh Interrogation Techniques Described, ABC News, Nov. 18, 2005 available at <http://abcnews.go.com/WNT/Investigation/story?id=1322866>. See also Jan Crawford Greenburg, Howard L. Rosenberg and Ariane de Vogue, *Sources: Top Bush Advisors Approved ‘Enhanced Interrogation.’* ABC News, Apr. 9, 2008, available at <http://abcnews.go.com/TheLaw/LawPolitics/story?id=4583256&page=1>. In 2003-2004, the CIA Inspector General investigated the use of ten extreme techniques. Douglas Jehl, *Report Warned C.I.A. on Tactics in Interrogation*, The New York Times, Nov. 9, 2005. CIA Director Michael Hayden has specifically stated Mr. Mohammad and two other CIA high-value detainees were subjected to waterboarding. *Hearing of the Senate Select Committee on Intelligence* (Feb. 5, 2008) (testimony of General Michael Hayden) at 24. See also Scott Shane, *Inside a 9/11 Mastermind’s Interrogation*, N.Y. Times, June 22, 2008. A 2007 investigative report into alleged secret detention in COE member states from a rapporteur for the Council of Europe combined descriptive testimonies from former or current detainees, human rights advocates, or people who have worked in the establishment or operations of CIA secret prisons to describe conditions in CIA detention that include: confinement, isolation, and insufficient provision; careful physical conditioning of detainee and cell; permanent surveillance; mundane routines as unforgettable memories; and exertion of physical and psychological stress. Eur. Parl. Ass., *Comm. on Legal Aff. and Hum. Rts., Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*, 17th Sitting, Doc. No. 10957 (2006) at pp. 51-53, available at <http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf> (describing “months of solitary confinement and extreme sensory deprivation ... A common feature for many detainees was the four-month isolation regime. During this period of over 120 days, absolutely no human contact was granted with anyone but masked, silent guards.” (emphasis in original)). Jane Mayer relates that a former CIA officer who favored the program said the agency frequently “photographed the prisoners naked ‘because it’s demoralizing.’” JANE MAYER, *THE DARK SIDE* (2008), p. 273.

³⁰ The Tenet memorandum directs certain CIA officers to use only “Permissible Interrogation Techniques” “unless otherwise approved by CIA headquarters” (emphasis added). “Permissible Interrogation Techniques” were defined as (a) Standard Techniques and (b) Enhanced Techniques. See January 28, 2003 Memorandum from CIA Director George Tenet (redacted) available at http://www.aclu.org/pdfs/safefree/cia_3684_001.pdf.

³¹ See Scott Shane, David Johnston, & James Risen, *Secret U.S. Endorsement of Severe Interrogations*, N.Y. Times, Oct. 4, 2007, available at <http://www.nytimes.com/2007/10/04/washington/04interrogate.html> (“We were

administration officials met to discuss and approve CIA interrogations, including those that combined different methods and thereby “push[ed] the limits of international law and even the Justice Department’s own legal approval [...]”³² In 2005, OLC issued another secret memorandum reportedly authorizing the combination of forms of treatment, including but not limited to waterboarding, head and belly slapping, sleep deprivation, temperature extremes, and stress positions.³³

21. In 2004, CIA Inspector General (IG) John Helgerson completed a months-long special review of the Agency’s interrogation practices.³⁴ The special review investigated at least three deaths of CIA-held detainees in Afghanistan and Iraq; the treatment of three dozen more, including Mr. Mohammad; and seven or eight cases in which the CIA appeared to have abducted and jailed misidentified people.³⁵ The CIA’s special review concluded the CIA’s techniques constituted cruel, inhuman, and degrading treatment, in violation of the Convention Against Torture.³⁶ The heavily redacted version of the report that is publically available suggests the IG may have used the OLC legal opinions as a basis for its analysis; it is possible that had the IG used a traditional view of US and international law, he might have concluded CIA techniques constituted torture.

22. Detainees held in the CIA high-value program who were transferred to military custody at Guantanamo in 2006, including detainees charged in the case of *U.S. v. Mohammed*, reported forms of abuse consistent with the forgoing descriptions to the International Committee of the Red Cross (ICRC) after their transfer. The ICRC report itself has not been made public. According to people familiar with its contents, the detainees told the ICRC they were kept

getting asked about combinations — ‘Can we do this and this at the same time?’” recalled Paul C. Kelbaugh, a veteran intelligence lawyer who was deputy legal counsel at the C.I.A.’s Counterterrorist Center from September to December of 2003. Interrogators were worried that even approved techniques had such a painful, multiplying effect when combined that they might cross the legal line, Mr. Kelbaugh said. He recalled agency officers asking: “These approved techniques, say, withholding food, and 50-degree temperature — can they be combined?” Or “Do I have to do the less extreme before the more extreme?”).

³² Jan Crawford Greenburg, Howard L. Rosenberg and Ariane de Vogue, Sources: Top Bush Advisors Approved ‘Enhanced Interrogation,’ ABC News, Apr. 9, 2008, available at <http://abcnews.go.com/TheLaw/LawPolitics/story?id=4583256&page=1> (“At one meeting in the summer of 2003 -- attended by Vice President Cheney, among others -- Tenet made an elaborate presentation for approval to combine several different techniques during interrogations, instead of using one method at a time, according to a highly placed administration source.”).

³³ JANE MAYER, *THE DARK SIDE* (2008), p. 309. This memorandum, which is not publically available, is one of at least three secret legal opinions relating to the interrogation of detainees in CIA custody believed to have been drafted by the OLC in May 2005 alone. See generally ACLU Press Release, ACLU Learns of Third Secret Torture Memo by Gonzales Justice Department (November 6, 2007) available at <http://www.aclu.org/safefree/torture/32597prs20071106.html>.

³⁴ Douglas Jehl, *Report Warned C.I.A. on Tactics in Interrogation*, The New York Times, Nov. 9, 2005.

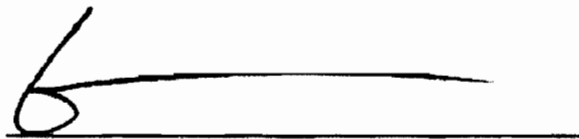
³⁵ *Id.*

³⁶ *Id.*

completely naked for extended periods; doused with cold water and subjected to frigid temperatures; sexually humiliated; forced to stand or shackled in stress positions for prolonged periods; beaten; held in close confinement for extended periods; yanked into walls by their necks with a towel or other lead; deprived of sleep for extended periods; subjected to extreme noise stress; and waterboarded. The ICRC reportedly described the CIA's detention and interrogation methods as tantamount to torture.³⁷

I have read the foregoing declaration, know the contents thereof, and declare under penalty of perjury of the laws of the United States that it is true and correct.

DATED this 21st day of August, 2008.

A handwritten signature in black ink, appearing to be 'Katherine Stone Newell', written over a horizontal line.

Katherine Stone Newell
Civilian Defense Counsel
Office of Military Commissions
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³⁷ See JANE MAYER, *THE DARK SIDE* (2008), p. 165 – 169.

Attachment G

ATTACHMENT G

1. Documents relevant to sources of law applicable to the CIA's power to apprehend, detain and interrogate terrorism suspects.¹ The CIA's broad, new, post-9/11 powers to apprehend, detain and interrogate terrorism suspects were secretly authorized by the President in a series of Presidential directives informed by legal advice and analysis from White House, CIA and DOJ lawyers. These directives and the analysis which form the basis of their supposed legality remain secret.

Presidential authorizations and related documents, such as records of written or verbal legal advice to the President from White House, CIA or DOJ lawyers, are relevant to questions of law and fact concerning actions taken under such authority. Without knowing the nature and scope of the powers that the President allegedly granted to the CIA at various times during Mr. Mohammed's prolonged detention and repeated interrogation, Mr. Mohammed cannot adequately assess key questions that have direct bearing on the legality and practical effect of actions taken by the U.S. Government.

In effect, Mr. Mohammed has been detained and interrogated under secret laws. Mr. Mohammed cannot adequately raise issues relating to his treatment at the hands of his captors and interrogators unless he knows what laws they operated under at the time, is given a fair opportunity to challenge this supposed legal authority, and show how government authorization for actions taken against him corroborate his claims of abuse.

Documents pertaining to lawful authority for and scope of the CIA's power to apprehend, detain and interrogate terrorism suspects include but are not limited to the following:

- 1.1. Presidential directives. The question of what was or was not authorized by the President for detainee interrogation is of paramount importance to any question of law or fact concerning such interrogation. Any arguments based upon the legality of the detainee's treatment must consider the terms of secret law under which the treatment was supposedly authorized by the Executive Branch. Additionally, the President's approval tends to corroborate factual claims.
 - 1.1.1. A list of all Presidential directives concerning authorization for and scope of the CIA's powers to apprehend, detain and interrogate terrorism suspects. Over the past seven and half years, various public sources have built a record confirming the existence of a series of secret Presidential directives specifying the supposed legal authority under which the CIA was allowed to exercise its new powers, including authorizations for and possibly limits on

¹ This designation is for the convenience of the court. It is not an admission by Mr. Mohammad that these documents actually constitute legal authority for CIA detention and interrogation operations, merely that they have been labeled as such by the U.S. government.

the use of interrogation techniques traditionally considered torturous.² The US government has confirmed the general existence of at least one relevant Presidential memorandum (described below), but the number, timing, and specific content of directives throughout the series remain secret. Apart from the directives described below, Mr. Mohammed is unable to identify which Presidential directives are necessary without information about their subject matter, recipients, and timing, and therefore requires a list with information sufficient for this determination.

- 1.1.2. (2001) Presidential authorization establishing the CIA program. The President reportedly issued at least one secret memorandum, dated on or about September 17, 2001, that gave the CIA general permission to kill, arrest, detain and interrogate suspected al Qaeda operatives.³ If it is true, as reported, that the President did not explicitly authorize the CIA to use specific interrogation techniques until 2003,⁴ then, during this period, this document may have been the sole Presidential authority under which the CIA subjected Mr. Mohammed and other detainees to interrogation techniques, such as waterboarding, which have traditionally been considered torture. This period coincides with the CIA's admitted use of waterboarding against Mr. Mohammed and others. Additionally, the applicable legal advice from the Office of Legal Counsel for most of this period affirmatively stated that the President could lawfully order interrogations considered torture even under its own narrow interpretation of U.S. law.⁵
- 1.1.3. (2001) Same or separate Presidential authorization for expanded rendition powers. The President also reportedly gave the CIA broad new authority to covertly transfer individuals to third countries solely for interrogation or detention purposes without case-by-case approval from the White House or

² As used here, "directive" means any form of written instruction or authorization from the President, including but not limited to new or amended Presidential Decision Directives, findings, signing statements, memoranda, and records of verbal directives.

³ Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post, Nov. 2, 2005, available at <http://www.washingtonpost.com/archive/local/2005/11/02/local/2005-11-02/> (discussing in detail the "covert prison system set up by the CIA").

⁴ Joby Warrick, *CIA Tactics Endorsed In Secret Memos; Waterboarding Got White House Nod*, October 15, 2008, available at <http://www.washingtonpost.com/archive/local/2008/10/15/local/2008-10-15/>.

⁵ For a period between August 2002 and June/December 2004, known OLC guidance posited that US interrogators were permitted to use even torture with Presidential authorization. Memorandum for Alberto R. Gonzales, Counsel to the President. From Office of Legal Counsel, US Department of Justice. Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340–2340A. August 1, 2002 ("Even if an interrogation method arguably were to violate Section 2340A, the statute would be unconstitutional if it impermissibly encroached on the President's constitutional powers to conduct a military campaign ... Any effort to apply Section 2340A in a manner that interferes with the President's direction of such core war matters as the detention and interrogation of enemy combatants thus would be unconstitutional."). This opinion was withdrawn in June 2004 and replaced with another known OLC opinion on December 30, 2004, which did not reach this point. Memorandum for James B. Comey, Deputy Attorney General. From Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice. December 30, 2004. It is not known if any other OLC guidance has been issued on this point.

the State or Justice Departments.⁶ This rendition program appears to have become the means by which CIA detainees were transported, specifically to other countries for foreign interrogation, but possibly also to US-controlled black sites.⁷ The authority may have been granted in the same 2001 directive authorizing the CIA's new general powers, or it may have been a separate document.

- 1.1.4. (2003 and 2004) At least two documents memorializing explicit White House approval of interrogation techniques. The President also reportedly issued two more secret memoranda to the CIA in 2003 and June/July of 2004, explicitly endorsing the CIA's use of specific interrogation techniques against al-Qaeda suspects.⁸ According to news reports, within a two-week period of his capture, Mr. Mohammad was subjected not just to waterboarding, but to many different techniques.⁹ The CIA specifically admits waterboarding Mr. Mohammad and two other detainees, and using the technique as late as early- to mid-2003.¹⁰

CIA Director George Tenet reportedly requested these memoranda following a series of discussions among members of the National Security Council beginning as early as 2002, in which, according to then-National Security Advisor to the President Condoleezza Rice, the participants expressed concern that techniques already in use may not be "effective, necessary ... and lawful".¹¹ Tenet also reportedly needed to reassure his subordinates that the techniques were approved by the White House.¹²

⁶ Douglas Jehl & David Johnston, Rule Change Lets C.I.A. Freely Send Suspects Abroad to Jails, N.Y. Times, Mar. 6, 2005, available at

⁷ Douglas Jehl & David Johnston, Rule Change Lets C.I.A. Freely Send Suspects Abroad to Jails, N.Y. Times, Mar. 6, 2005, available at

⁸ Joby Warrick, CIA Tactics Endorsed In Secret Memos; Waterboarding Got White House Nod, October 15, 2008, available at

⁹ Jane Mayer cites James Risen's *State of War*, pg. 32

¹⁰ "[Waterboarding] was used on Khalid Sheikh Mohammed The CIA has not used waterboarding for almost five years." General Michael Hayden, Director of the Central Intelligence Agency, Testimony before the Senate Select Committee On Intelligence, "Annual Worldwide Threat Assessment", February 5, 2008, p.26, transcript available at . See also General Michael Hayden, Director of the Central Intelligence Agency, Testimony before the House Permanent Select Committee On Intelligence, "Annual Worldwide Threat Assessment", February 7, 2008, (stating that the CIA had not used waterboarding for "just a few weeks short" of five years), p.26, transcript available at

¹¹ See Responses of Condoleezza Rice, 12 September 2008, at Tab 3 of documents accompanying Senate Armed Services Committee Hearing on the Authorization of SERE Techniques for Interrogations in Iraq: Part II of the Committee's Inquiry into the Treatment of Detainees in U.S. Custody, United States Senate Committee on Armed Services (September 27, 2008), available at

¹² Joby Warrick, CIA Tactics Endorsed In Secret Memos; Waterboarding Got White House Nod, October 15, 2008, available at

It is now publically known that on or about the dates these memoranda were issued, secret legal advice from the Office of Legal Counsel affirmatively stated that the President could lawfully order interrogations considered torture even under the Administration's own narrow interpretation of U.S. law.¹³

- 1.1.5. (undated) Presidential memorandum that the US Government admits authorized setting up detention facilities outside the United States and/or outlined interrogation techniques that may be used against detainees. In May 2004, the ACLU submitted a FOIA request for, inter alia, a "Directive [of unknown date] signed by President Bush that grants CIA the authority to set up detention facilities outside the United States and/or outline interrogation techniques that may be used against detainees." The CIA admitted one such memorandum from President Bush to the Director of the CIA existed, without providing additional information about its timing or content.¹⁴ It is not clear whether this admission refers to the above-listed 2001 Presidential directive authorizing the CIA's new general powers, the above-listed 2003 Presidential directive explicitly approving interrogation techniques, or some other as-yet-unknown Presidential directive.

- 1.2. OLC legal advice. It is now known that beginning at least as early as 2002, the Department of Justice's Office of Legal Counsel (OLC) produced a series of secret legal opinions for Administration officials concerning the legality of specific actions taken by the CIA to detain and interrogate al Qaeda suspects, including Mr. Mohammad. The frequency and importance of legal analysis and advice from OLC is widely cited by the Administration, particularly in response to concerns about the legality of the CIA program.¹⁵ Indeed, the U.S.

¹³ See *id.* at 5. When the first memorandum was issued in 2003, this guidance was in effect. When the second memorandum was issued in June or July 2004, this guidance had been or was about to be revoked; it was not replaced, however, until December of 2004.

¹⁴ See Letter from Office of General Counsel, CIA to Melanca D. Clark, Gibbins [sic], Del Deo, Dolan, Griffinger & Vecchione, P.C., Nov. 10, 2006 (letter sent in connection with *ACLU et. al. v. DOD et. al.*, 04-Civ.-4151 (S.D.N.Y.), remanded 06-0205-cv (2nd Cir.), available at http://www.aclu.org/na/na.cfm?id=material&material_id=1022).

¹⁵ President Bush said that "The Department of Justice reviewed the authorized methods extensively" and "This program has been subject to multiple legal reviews by the Department of Justice and CIA lawyers". White House Office of the Press Secretary, *News Release: President Discusses Creation of Military Commissions to Try Suspected Terrorists*, Sept. 6, 2006, available at <http://www.whitehouse.gov/the-press-office/2006/09/06/president-discusses-creation-of-military-commissions-to-try-suspected-terrorists>.

ODNI stated that "The Department of Justice has reviewed procedures proposed by the CIA on more than one occasion...". Announcement, Office of the Director of National Intelligence, *Summary of the High Value Terrorist Detainee Program*, undated, available at <http://www.dni.gov/files/ODNI/Press%20Releases/2007/070607a.pdf>. CIA Director General Hayden stated that the "...CIA designed specific, appropriate interrogation procedures. Before they were used, they were reviewed and approved by the Department of Justice and by other elements of the Executive Branch." *Statement to Employees by Director of the Central Intelligence Agency, General Mike Hayden on the Taping of Early Detainee Interrogations* (Dec. 6, 2007) available at <http://www.cia.gov/library/publications/rmr/2007/070607a.pdf>.

He has also discussed waterboarding and noted that "That tactic, which

government has taken the position that written opinions by the Office of Legal Counsel have the force of law within the government.¹⁶ OLC guidance therefore was not simply viewed as a form of legal advice interpreting the law: it *was* the law, going so far as to parse the exact circumstances under which an interrogation technique would be used singly or in combination against a particular individual.¹⁷ These memoranda set the outer limits for very specific aspects of detainee treatment, to include interrogation; these legal limits not only gave the CIA permission, but a mandate, that CIA officers felt obliged to follow.¹⁸ Absent a positive showing by the Government, the Commission should assume facts alleged by Mr. Mohammad that fall within the legal limits set by the Administration are credible.

- 1.2.1. A list of all documents constituting legal analysis and advice from OLC provided to any agency, office, entity, or officer of the Executive Branch from September 11, 2001 to the present, concerning CIA interrogation program or practice. Legal analysis and advice from OLC CIA interrogation program or practice have been classified secret. As with the Presidential directives described above, the public record built piece by piece over the past seven-and-a-half years by journalists and through FOIA litigation is insufficient basis for counsel to identify all relevant OLC opinions. Apart from those described below, Mr. Mohammad is unable to identify which OLC opinions are necessary without information about their content and

has not been employed since 2003, was deemed legal by the Department of Justice when it was used." *Statement to Employees by Director of the Central Intelligence Agency, General Michael V. Hayden on Lawful Interrogation*, Feb. 13, 2008, available at

Then-chief counsel to the CIA's counter-terrorism centre John Fredman stated in relation to the CIA's use of coercive techniques that "Significantly harsh techniques are approved through the DOJ". As paraphrased by a CITF officer at the meeting. Email and attached meeting minutes at Tab 3 of documents accompanying *The Origins of Aggressive Interrogation Techniques: Part I of the Committee's inquiry into the treatment of detainees into U.S. custody*, United States Senate Committee on Armed Services (June 17, 2008), available at

¹⁶ See ABC News, Full Transcript of ABC's Martha Raddatz Interview with President Bush (Apr. 11, 2008), ("We had legal opinions that enabled us to do it.") available at

¹⁷ "The question is, is waterboarding a legal technique? And everything I know, based on the appropriate authority to make that judgment, it is a legal technique used in a specific set of circumstances. You have to know the circumstances to be able to make the judgment." Mr. Michael McConnell, Director Of National Intelligence, Testimony before the Senate Select Committee On Intelligence, "Annual Worldwide Threat Assessment", February 5, 2008, p.28, transcript available at

¹⁸ This approach was described by CIA Director Hayden in 2008 thus, when he spoke of new limits Congress was considering for the CIA program: "Let me say something very clearly, Senator. I really need to put this on the record. We will do — *we will play to the edges of the box that the American political process gives us*. In the creation of that box, if we're asked a view, we'll give a view. But the lines drawn by that box are the product of the American political process. Once you've drawn the box, once that process creates a box, *we have a duty to play to the edge of it. Otherwise we're not protecting America...*" (emphasis added). General Michael Hayden, Director of the Central Intelligence Agency, Testimony before the Senate Select Committee On Intelligence, "Annual Worldwide Threat Assessment", February 5, 2008, p.53, transcript available at

timing, and therefore requires a list with information sufficient for this determination.

1.2.2. Memorialization of verbal legal analysis and advice from OLC provided to any agency, office, entity, or officer of the Executive Branch, including the NSC Principals Committee, from September 11, 2001 to the present, concerning CIA interrogation. The role of the NSC Principals Committee is described above. John Bellinger, Secretary Rice's Legal Advisor at the time, wrote that OLC attorneys provided oral advice at "several" NSC Principals meetings.¹⁹ Journalist Jane Mayer reported an unsubstantiated rumor that OLC deputy chief John Yoo had orally approved some "especially questionable" CIA practices, "including the use of mind-altering drugs and mock burials".²⁰

1.2.3. (2002) Any legal analysis and advice from OLC regarding the interpretations of Common Article 3 of the 1949 Geneva Conventions. The Administration's determination that Common Article 3 did not apply to members of al Qaeda in a "war" with the United States effected a fundamental departure from the traditional relationship between a wartime detaining power and its captives. This memorandum may have this title: Memorandum for John Yoo, Deputy Assistant Attorney General, OLC, from James C. Ho, Attorney-Advisor, OLC, Re: Possible Interpretations of Common Article 3 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War. On October 21, 2008, Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) issued a subpoena to Attorney General Michael Mukasey requesting this and related documents.²¹

1.2.4. (1 August 2002) Memorandum from Office of Legal Counsel to [REDACTED], re: Interrogation of [REDACTED]. This 18-page OLC opinion begins, "You have asked for this Office's views on whether certain proposed conduct would violate the prohibition against torture found at Section 2340A of title 18 of the United States Code", referring to a statute criminalizing torture committed outside US territory. A heavily redacted version of this document is publicly available.²² This memorandum appears to have directly authorized the use of specific interrogation techniques that have traditionally been considered torture, including waterboarding, for one or more CIA detainees.

¹⁹ See Responses of John B. Bellinger, III, 12 September 2008, at Tab 4 of documents accompanying Senate Armed Services Committee Hearing on the Authorization of SERE Techniques for Interrogations in Iraq: Part II of the Committee's Inquiry into the Treatment of Detainees in U.S. Custody, United States Senate Committee on Armed Services (September 27, 2008), available at http://www.senate.gov/committees/armed_services/interrogations/20080927/080927_04.pdf.

²⁰ Jane Mayer, *The Dark Side*, p. 307.

²¹ See http://www.senate.gov/committees/armed_services/interrogations/20081021/102108_01.pdf.

²² See http://www.senate.gov/committees/armed_services/interrogations/20081021/102108_01.pdf.

1.2.5. (May 2005) Three memoranda authorizing the CIA to combine interrogation techniques and determining that none of the CIA's techniques constituted "cruel, inhuman, or degrading treatment". In November 2008, the US government admitted that in May 2005 the OLC provided three classified legal memoranda to the CIA that had been described by the New York Times in a 2007 article.²³ The article describes memoranda that represented what the Times called an "expansive endorsement of the harshest interrogation techniques ever used by the Central Intelligence Agency".²⁴

At least one of the three memorandum "for the first time provided explicit authorization to barrage terror suspects with a combination of painful physical and psychological tactics, including head-slapping, simulated drowning and frigid temperatures."²⁵ The combination of even seemingly-innocuous forms of treatment are widely recognized as potentially torturous, particularly when inflicted on a susceptible subject and for prolonged periods of time.

At least one other memorandum declared that none of the CIA's interrogation methods violated a law being considered by Congress that specifically prohibited "cruel, inhuman, or degrading treatment or punishment" of any person under custody or control of the United States government.²⁶ Vice President Cheney ineffectively lobbied Congress to exempt the CIA from this prohibition. When President Bush signed the bill, he offered a signing statement that indicated that he reserved the right, at some undisclosed point in the future, and in various undisclosed ways, to refuse to enforce it.²⁷ These circumstances tend to demonstrate the Administration's belief that CIA officers were subjecting detainees to what

²³ Defendants' Memo in Opposition to Plaintiffs' Motion for Preliminary Injunction, *ACLU v. Department of Defense*, 5 November 2007, ("An October 4, 2007 New York Times article reported that OLC issued two classified legal opinions in 2005 to CIA relating to the interrogation of detainees in CIA custody.... OLC has reviewed its opinions from that time frame and has determined that there were in fact three opinions issued to CIA relating to the interrogation of detainees in CIA custody. Two of the opinions were issued on May 10, 2005. The third was issued on May 30, 2005." (citations omitted)), available at <http://www.aclu.org/press/071107.cfm>.

²⁴ See Scott Shane, David Johnston, & James Risen, *Secret U.S. Endorsement of Severe Interrogations*, N.Y. Times, Oct. 4, 2007, available at <http://www.nytimes.com/2007/10/04/us/politics/04iht-secret04.html>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ The signing statement asserted executive power to construe the prohibitions against cruel, inhuman and degrading treatment "in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power, which will assist in achieving the shared objective of the Congress and the President, evidenced in Title X, of protecting the American people from further terrorist attacks." President's Statement on Signing of H. R. 2863, the "Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006" (Dec. 30, 2005), available at <http://www.whitehouse.gov/the-press-office/2006/01/03/statement-on-signing-hr-2863.html>.

would traditionally have been considered at least cruel, inhuman, or degrading treatment, if not torture.

1.2.6. (2005 until present) Unknown number of memoranda confirming the legal conclusions in the May 2005 opinions. The New York Times also reported that additional OLC legal opinions later confirmed the legal conclusions in the May 2005 opinions.²⁸

2. Documents pertaining to policy authority for detention and interrogation of Mr. Mohammad by CIA officers. Mr. Mohammad alleges, and the CIA has admitted, that he was waterboarded in interrogation, treatment traditionally considered a form of torture.²⁹ The ICRC has labeled treatment in the CIA program “tantamount to torture”, and the CIA’s own Inspector General determined the program violated prohibitions on “cruel, inhuman and degrading treatment”, likely using a definition that included treatment traditionally considered torture. Given the extreme level of controversy surrounding the CIA program, the U.S. policymakers who set its limits have a strong interest in controlling the information about these decisions, even assuming they acted in good faith and their actions were lawful.

2.1. Records of discussions of and approvals from the National Security Council (NSC) and the Principals Committee for CIA detention and interrogation of the accused.³⁰ In the spring of 2002, the CIA sought policy approval from the National Security Council (NSC) Principals to begin the interrogation program for high-level al-Qaida detainees, and continued to involve NSC Principals in meetings where Principals reviewed the CIA’s interrogation program and discussed the use of specific CIA interrogation techniques on specific

²⁸ See Scott Shane, David Johnston, & James Risen, *Secret U.S. Endorsement of Severe Interrogations*, N.Y. Times, Oct. 4, 2007, (“But the 2005 Justice Department opinions remain in effect, and their legal conclusions have been confirmed by several more recent memorandums, officials said.”) available at <http://www.nytimes.com/2007/10/04/us/politics/04iht-shane04.html>.

²⁹ Mr. Mohammad does not concede that waterboarding was the only, or even the worst, form of abuse to which he was subjected. Open sources describe additional interrogation techniques used on him singly and in combination. He was also “disappeared” for three-and-a-half years, treatment that itself may constitute torture, and subjected to prolonged, harsh detention conditions.

³⁰ “The National Security Council is chaired by the President. Its regular attendees (both statutory and non-statutory) are the Vice President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, and the Assistant to the President for National Security Affairs. The Chairman of the Joint Chiefs of Staff is the statutory military advisor to the Council, and the Director of National Intelligence is the intelligence advisor. The Chief of Staff to the President, Counsel to the President, and the Assistant to the President for Economic Policy are invited to attend any NSC meeting. The Attorney General and the Director of the Office of Management and Budget are invited to attend meetings pertaining to their responsibilities. The heads of other executive departments and agencies, as well as other senior officials, are invited to attend meetings of the NSC when appropriate.” The Principals Committee of President Bush’s national security advisors is a five cabinet-level group that include the Vice President, the Secretary of State, the Secretary of Defense, the Director of the CIA, the National Security Advisor, the Attorney General, and the Chairman of the Joint Chiefs of Staff. Jane Mayer, *The Dark Side*, p. 24. The Principals are convened by the National Security Advisor and are sometimes called “NSC Principals”.

detainees.³¹ These discussions and the resulting policy approvals likely have been memorialized in the records of the Office of the National Security Advisor, or offices of other Principals.

³¹ See ABC News, Full Transcript of ABC's Martha Raddatz Interview with President Bush (Apr. 11, 2008), (President Bush confirms he knew that senior national security officials, including Vice President Cheney, approved enhanced interrogation methods for detainees in 2003, including waterboarding), available at [http://www.abcnews.com/press/20080411/bushtranscript/](#); *The Cheney Exit Interview*, CBS Face The

Nation, Jan. 4, 2009, available at [http://www.cbsnews.com/stories/01/04/09/nation/main010409 Cheney010409_01.html](#).

("The vice president said that high-level approvals of torture were required because the CIA would otherwise not want to pursue such interrogation methods without a clear understanding of what was authorized and appropriate."); Responses of Condoleezza Rice, 12 September 2008, at Tab 3 of documents accompanying Senate Armed Services Committee Hearing on the Authorization of SERE Techniques for Interrogations in Iraq: Part II of the Committee's Inquiry into the Treatment of Detainees in U.S. Custody, United States Senate Committee on Armed Services (September 27, 2008), (confirming there were meetings in 2002 and 2003 at the White House in which Principals reviewed the CIA's interrogation program and discussed the use of specific CIA interrogation techniques, and stating that when CIA sought approval of the interrogation program she asked Director of Central Intelligence George Tenet to brief the Principals; she asked Attorney General John Ashcroft to "personally advise NSC Principals whether the program was lawful"; and the Department of Justice's advice on the program to the Principals "was being coordinated by Counsel to the President Alberto Gonzales"), available at [http://www.senate.gov/committees/armed_services/20080927/080927_01.html](#).

; George Tenet, At the Center of the Storm, p. 241 (stating the NSC discussed how to interrogate Abu Zubaydah, who the US government admits was waterboarded); Responses of John B. Bellinger, III, 12 September 2008, at Tab 4 of documents accompanying Senate Armed Services Committee Hearing on the Authorization of SERE Techniques for Interrogations in Iraq: Part II of the Committee's Inquiry into the Treatment of Detainees in U.S. Custody, United States Senate Committee on Armed Services (September 27, 2008), (statement from John Bellinger, Secretary Rice's Legal Advisor at the time that he asked CIA lawyers to seek legal advice not only from the OLC, but also from the Criminal Division of the Department of Justice, headed at the time by Michael Chertoff, who is now Secretary of Homeland Security), available at [http://www.senate.gov/committees/armed_services/20080927/080927_01.html](#).

; U.S. Department of Justice, Office of the Inspector General, *A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq DOJ*, May 2008, at 73 ("[FBI] Director Mueller's former Chief of Staff, Daniel Levin, told the OIG that in the context of the Zubaydah interrogation, he attended a meeting at the National Security Council (NSC) at which CIA techniques were discussed. Levin stated that a DOJ Office of Legal Counsel (OLC) attorney gave advice at the meeting about the legality of CIA interrogation techniques."), redacted version available at [http://www.oig-jdoj.gov/assetmgr/document/1020](#).

See also Jan Crawford Greenburg, Howard L. Rosenberg and Ariane de Vogue, Sources: Top Bush Advisors Approved 'Enhanced Interrogation,' ABC News, Apr. 9, 2008, available at [http://abcnews.com/press/20080409/bushsources/](#).

("At one meeting in the summer of 2003 -- attended by Vice President Cheney, among others -- Tenet made an elaborate presentation for approval to combine several different techniques during interrogations, instead of using one method at a time, according to a highly placed administration source."); Joby Warrick, CIA Tactics Endorsed In Secret Memos; Waterboarding Got White House Nod, October 15, 2008 (describing a series of private briefings about the program with members of the administration's security team, including Rice and Cheney, followed by more formal meetings before a larger group including Ashcroft, Gonzales and Rumsfeld), available at [http://www.washingtonpost.com/wp-dyn/content/article/2008/10/15/AR20081015-01111.html](#).

; Jane Mayer, *The Dark Side*, p. 145 (describing meetings in which CIA Director George Tenet was "eager to spread the political risk of undertaking 'enhanced interrogations'" by discussing the use of specific techniques on specific detainees, and others became irritated with Tenet's insistence on "airing the grim details ... [AG] Ashcroft in particular took offense at discussing such distasteful matters inside the White House. "History will not judge us kindly," he reportedly warned.").

3. Names and organizational relationships of the operational and supervisory components of the CIA with formal or practical oversight of Mr. Mohammad's detention and interrogation operations, and components that handled information relating to the charges against him, as they existed over time. Mr. Mohammad is unable to limit his request for information from specific CIA offices if he does not know what those offices were called, what they did, or what their responsibilities were within the CIA over time. Open sources describe CIA offices with shifting labels and overlapping functions that changed over time, such as the "UBL Unit", the "High Value Target Unit", the "High Value Detainee Unit".
4. Documents pertaining to guidance for and records of operations of the CIA's detention and interrogation program. Just as the CIA program described publicly by the Administration depended heavily on frequent and specific guidance from OLC,³² it also apparently required extensive agency-level guidance. Administration officials have publicly described the extent to which the CIA program was planned, controlled, and overseen, and countered concerns about the program's legality with references to concepts such as, inter alia, safeguards, controls, and oversight. For example, the Office of the DNI describes "multiple safeguards" that have been "built into the program to ensure its professionalism".³³ Director Michael Hayden justified the decision not to videotape interrogations and the destruction of earlier tapes with references to the CIA's "full and exacting" practices of documenting interrogations.³⁴ President Bush, the ODNI, and CIA Director Hayden have all referred to the amount or specificity of training for CIA interrogators.³⁵

These assertions (and common sense) support a reasonable presumption that the CIA generated extensive written guidance providing its officers with both standard operating procedures and event-specific instructions, and addressing, among other things: detailed instructions on the use of specific interrogation techniques; training requirements for program personnel, particularly interrogators or associated medical

³² See, above, at [[cite to footnote beginning "President Bush said"]]. Again, Mr. Mohammad does not concede that OLC guidance conferred actual legality, simply that the Administration has described it this way.

³³ Announcement, Office of the Director of National Intelligence, Summary of the High Value Terrorist Detainee Program, undated.

³⁴ See

³⁵ See White House Office of the Press Secretary, News Release: President Discusses Creation of Military Commissions to Try Suspected Terrorists, Sept. 6, 2006, available at <http://www.whitehouse.gov/the-press-office/2006/09/06/president-discusses-creation-of-military-commissions-to-try-suspected-terrorists>; Announcement, Office of the Director of National Intelligence, Summary of the High Value Terrorist Detainee Program, undated, available at http://www.dni.gov/files/odni/documents/summary_of_high_value_terrorist_detainee_program.pdf (President Bush and the ODNI both explaining that interrogators must be screened and that they must also complete more than 250 hours of specialized training); CIA Director General Hayden, A Conversation with Michael Hayden, Council on Foreign Relations, Sept. 7, 2007, available at <http://www.cfr.org/terrorism/p161699.html> (CIA Director General Hayden stating that "The amount of training for this specific activity is 240 hours.").

personnel; procedures for documenting interrogations; procedures and guidelines for medical and legal review before, during, and/or after interrogations; and so forth.

Such guidance applicable at any time during Mr. Mohammad's detention by the CIA should be made available to Mr. Mohammad in discovery because it is relevant and essential to, inter alia, legal arguments involving a 'totality of circumstances' analysis, legal and factual arguments relating to mitigation, and facts that corroborate his allegations of abuse. An absence of such guidance at any point in time is equally relevant for all of these reasons, and the Government's stipulation that such guidance does not exist or cannot be shared must be interpreted in a light most favorable to Mr. Mohammad.

- 4.1. A list of documents that served as operational guidance, whether as a standard operating procedure or event-specific instruction, for any person associated with the CIA detention and interrogation program or practice. Said persons include but are not limited to U.S. or foreign citizens or corporate entities; CIA employees or contracted individuals or corporations; interrogation, medical, detention or support personnel.

Open source information about detainee abuse in the CIA program has tended to suggest the most egregious treatment withstood by its subjects was the discrete application of "enhanced" interrogation techniques such as waterboarding. However, this formulation is inappropriate and misleading. The practical and legal effects of the CIA program on its subjects can only be understood as the product of a series of prolonged and combined events visited on specific individuals over a period of years. Therefore, operational guidance that covers any activity that has bearing on Mr. Mohammad's mental or physical condition, or state of mind, while interrogated and/or detained by the CIA, is relevant; including, but not limited to: interrogation or interview techniques employed singly or in combination inside or outside the interrogation room; day-to-day detention conditions and operations; and measures for detainee control or discipline.

Mr. Mohammed is unable to narrow his request for the CIA operational documents and records necessary for his defense and sentencing without information about their subject matter, recipients, and timing, and therefore requires a list with information sufficient for this determination. It is particularly unreasonable to expect Mr. Mohammad to find information on his own to narrow his request, given their like classification level of the documents and that operational files of the National Clandestine Service of the CIA are exempt from FOIA.

Subjects of such guidance include, but are not limited to:

- 4.2. Documentation of operational guidance, whether as a standard operating procedure or event-specific instruction, for use of any interrogation techniques.

singly or in combination, including limits on their use. "Standard" interrogation techniques taken to an extreme can be abusive and even tantamount to torture.³⁶ CIA sources have reportedly described "enhanced interrogation techniques" instituted in mid-March 2002 and used on CIA detainees singly and in combination. It appears that CIA officers were not limited to the use of only "standard" and "enhanced" techniques, but could request permission to subject detainees to other forms of treatment, potentially more severe.³⁷ Finally, even the Administration's legal authorities concede that the legality of an interrogation technique is a function of its boundaries.

5. Records of specific detention or interrogation operations and events involving Mr. Mohammad, or any detainee who provided information about Mr. Mohammad. Just as it is reasonable to presume that the CIA generated extensive written guidance providing its officers with both standard operating procedures and event-specific instructions, the program certainly generated a large number of records of specific operations and events. CIA officers responsible for the detention and interrogation of high-value detainees frequently traded specific requests and permissions with their superiors.³⁸ Program guidance included rules about documenting interrogations, to the point where the CIA Director has cited extensive recordkeeping as justification

³⁶ "[Military Commission Convening Authority Judge Susan] Crawford ... said the combination of the interrogation techniques, their duration and the impact on [Mohammad al] Qahtani's health led to her conclusion [that he was tortured]. 'The techniques they used were all authorized, but the manner in which they applied them was overly aggressive and too persistent. . . . You think of torture, you think of some horrendous physical act done to an individual. This was not any one particular act; this was just a combination of things that had a medical impact on him, that hurt his health. It was abusive and uncalled for. And coercive. Clearly coercive. It was that medical impact that pushed me over the edge' to call it torture, she said." Bob Woodward, *Detainee Tortured, Says U.S. Official; Trial Overseer Cites 'Abusive' Methods Against 9/11 Suspect*, Washington Post, January 14, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/14/AR-2009-01-14>

³⁷ See Memo Dated January 28, 2003, from CIA to OLC, signed by CIA Director George Tenet (redacted), available at http://www.foia.gov/docid/20030001/20030001_0001.pdf (document released in connection with *ACLU et. al. v. DOD et. al.*, 04 Civ. 4151 (S.D.N.Y.), remanded 06-0205-cv (2nd Cir.)) (stating "Unless otherwise approved by Headquarters, CIA officers [redacted] may use only Permissible Interrogation Techniques. Permissible Interrogation Techniques consist of both (a) Standard Techniques and (b) Enhanced Techniques.").

³⁸ Scott Shane, David Johnston, & James Risen, *Secret U.S. Endorsement of Severe Interrogations*, N.Y. Times, Oct. 4, 2007, available at <http://www.nytimes.com/2007/10/04/us/politics/04iht-us04.html> (Paul C. Kelbaugh, deputy legal counsel at the CIA's Counterterrorist Center from 2001 to 2003 quoted as publicly recalling that interrogators sent lawyers questions from the "black sites" about the legal limits on their interrogation techniques and stating that "We were getting asked about combinations-'Can we do this and this at the same time?'"); Richard Esposito & Brian Ross, *Coming in From the Cold: CIA Spy Calls Waterboarding Necessary But Torture, Former Agent Says the Enhanced Technique Was Used on Al Qaeda Chief Abu Zubaydah*, ABC News, Dec. 10, 2007, Part 1 of Transcript at 20-21, available at <http://abcnews.go.com/US/story?id=4111111> (quoting former CIA agent John Kiriakou stating that "It wasn't up to individual interrogators to decide. 'Well, I'm gonna slap him' Or, 'I'm going to shake him.' Or, 'I'm gonna make him stay up for 48 hours.' Each one of these steps, even though they're minor steps, like the intention shake, or the open-handed belly slap, each one of these had to have the approval of the deputy director for operations..." and "The cable traffic back and forth was extremely specific... it was extremely deliberate.").

for the decisions to destroy videotapes and end the practice of taping.³⁹ An absence of records required by program guidance at any point in time is equally relevant for all of these reasons, and the Government's stipulation that such records do not exist or cannot be shared must be interpreted in a light most favorable to Mr. Mohammad.

5.1. Formal designation of individual subjects of the program and the accompanying supporting information package. Given the extraordinary nature of the powers the CIA was authorized to use against individuals, the CIA presumably formally designated specific individuals to be the subject of the program, either prior to their capture or after they were in custody. Such formal designations have been publicly described as "Kill-Capture-Detain" orders that were reviewed and approved by the CIA, the White House, and DOJ.⁴⁰ It is reasonable to assume such an order would have been associated with a package of information describing, *inter alia*, the detainee's alleged terrorist activities, the likelihood he would possess certain types of knowledge, and personal data relevant to later interrogations, such as familial associations or medical information. Such information is relevant to questions about his later treatment and the basis for criminal charges against him.

5.2. Complete contemporaneous records of each interrogation session, including but not limited to sessions in which an "enhanced technique" was employed. CIA officers appear to have been directed to create complete contemporaneous records of each interrogation session in which an "enhanced technique" was

³⁹ Director Michael Hayden justified the decision not to videotape interrogations and the destruction of earlier tapes with references to the CIA's "full and exacting" practices of documenting interrogations. See Statement to Employees by Director of the Central Intelligence Agency, General Mike Hayden on the Taping of Early Detainee Interrogations (December 6, 2007), available at http://www.cia.gov/library/publications/rumsfeld_hayden_120607.pdf.

DOJ National Security Division and the CIA's Office of Inspector General opened a joint preliminary inquiry on December 8, 2007, into the CIA's destruction of interrogation videotapes; it concluded that a criminal investigation was in order. On Jan 2, 2008, USAG Mukasey announced the appointment AUSA John Durham to supervise the FBI investigation. See U.S. Dep't of Justice, Statement by Attorney General Michael B. Mukasey Regarding the Opening of an Investigation Into the Destruction of Videotapes by CIA Personnel, Jan. 2, 2008, (announcing the initiation of a criminal investigation into the destruction of videotapes by the CIA) available at <http://www.justice.gov/opa/record/2008/01/02/20080102.htm>.

See also Josh White, Justice, CIA Begin Videotape Inquiry, Wash. Post, Dec. 9, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/09/AR20071209-02619.html>.

(recording that in December 2007, the Department of Justice indicated that it would be working with the CIA's Inspector General's office to determine "whether a further investigation is warranted" into the agency's destruction of videotapes in 2005).

⁴⁰ "The men in this category had mostly been picked out already as 'High-Value Targets', or HVTs, and once in the custody of the CIA they would become 'High-Value Detainees', or HVDs... the CIA's post-9/11 HVD programme was designed and vetted in consultation with various lawyers in the Justice Department, the CIA and in the Presidential Administration. All three of these sets of lawyers, as our sources confirmed, have approved so-called 'Kill, Capture or Detain' orders, or 'K-C-D orders', for high-value targets with whom the CIA came into contact." Eur. Parl. Ass., *Comm. on Legal Aff. and Hum. Rts., Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report*, 23rd Sitting, Doc. No. 11302 (2007), at para. 61, 64, available at http://www.coe.int/t/e/hudocdec/comhlhr/leg/2007/11302_20070101_en.asp.

employed, including but not limited to “nature and duration of each such technique employed, the identities of those present, [and] [REDACTED]”⁴¹ CIA officers were likely given other instructions for documentation that have not been made public.⁴²

- 5.3. Records demonstrating that CIA personnel involved in Mr. Mohammad’s interrogations acknowledged receipt of CIA policy guidance. CIA officers appear to have been directed to sign documents acknowledging their receipt and intent to comply with specific policy guidance.⁴³
 - 5.4. Documents relating to any requests from CIA officers for permission to use other than “permissible interrogation techniques” on Mr. Mohammad, or any detainee who provided information about Mr. Mohammad. CIA officers appear to have been instructed that interrogation techniques other than those previously designated “permissible” could be used with prior approval.⁴⁴
 - 5.5. Medical records created or maintained by personnel assigned to “Behavioral Science Consultation Teams” (BSCTs) or performing a similar function. It is widely believed that the CIA used mental health professionals to develop precise regimens for the detention and interrogation of individual detainees to maximally exploit their psychological vulnerabilities, and that these BSCT personnel created and maintained medical records on individual subjects that were distinct in purpose and form from records that tracked detainees’ health as part of the overall detention management.
6. Government investigations into the legality of actions taken in the CIA program.

⁴¹ See Memo Dated January 28, 2003, from CIA to OLC, signed by CIA Director George Tenet (redacted), available at [REDACTED] (document released in connection with *ACLU et. al. v. DOD et. al.*, 04 Civ. 4151 (S.D.N.Y.), remanded 06-0205-cv (2nd Cir.)) (stating a requirement for such documentation).

⁴² Director Michael Hayden justified the decision not to videotape interrogations and the destruction of earlier tapes with references to the CIA’s “full and exacting” practices of documenting interrogations. See Statement to Employees by Director of the Central Intelligence Agency, General Mike Hayden on the Taping of Early Detainee Interrogations (December 6, 2007), available at [REDACTED].

⁴³ See Attachment to Memo Dated January 28, 2003, from CIA to OLC, signed by CIA Director George Tenet (redacted), available at [REDACTED] (document released in connection with *ACLU et. al. v. DOD et. al.*, 04 Civ. 4151 (S.D.N.Y.), remanded 06-0205-cv (2nd Cir.)) (“I, [REDACTED], acknowledge that I have read and understand and will comply with the [REDACTED]”).

⁴⁴ See Memo Dated January 28, 2003, from CIA to OLC, signed by CIA Director George Tenet (redacted), available at [REDACTED] (document released in connection with *ACLU et. al. v. DOD et. al.*, 04 Civ. 4151 (S.D.N.Y.), remanded 06-0205-cv (2nd Cir.)) (stating “Unless otherwise approved by Headquarters, CIA officers [REDACTED] may use only Permissible Interrogation Techniques. Permissible Interrogation Techniques consist of both (a) Standard Techniques and (b) Enhanced Techniques.”).

6.1. (7 May 2004) CIA OIG Special Review of █████ Counterterrorism Detention and Interrogation Activities (September 2001 – October 2003), and supporting documentation. In 2004, CIA Inspector General (IG) John Helgeson completed a months-long special review of the Agency's interrogation practices.⁴⁵ The special review investigated, inter alia, the treatment of more than three dozen CIA-held detainees, including Mr. Mohammad.⁴⁶ The CIA's special review concluded the CIA's techniques constituted cruel, inhuman, and degrading treatment, in violation of the Convention Against Torture.⁴⁷ The heavily redacted version of the report that is publically available suggests the IG may have used the OLC legal opinions as a basis for its analysis; it is possible that had the IG used a traditional view of US and international law, he might have concluded *CIA techniques constituted torture. The fact that the IG gathered enough evidence to reach this conclusion demonstrates that such evidence exists and CIA data stores are searchable for the types of evidence used by the IG.*

6.2. DOJ investigations into the CIA program, including those initiated by reporting required by interagency agreements between DOJ and CIA. In 1995, DOJ and CIA entered into an MOU which requires each employee of an intelligence agency to report any facts or circumstances that reasonably indicate that an employee of an intelligence agency has committed a crime. The MOU also requires reports of specified crimes by persons who are not employees of any intelligence agency (such as civilian contractors). The CIA has apparently referred at least five cases of CIA detainee abuse to DOJ for investigation and possible criminal prosecution.⁴⁸

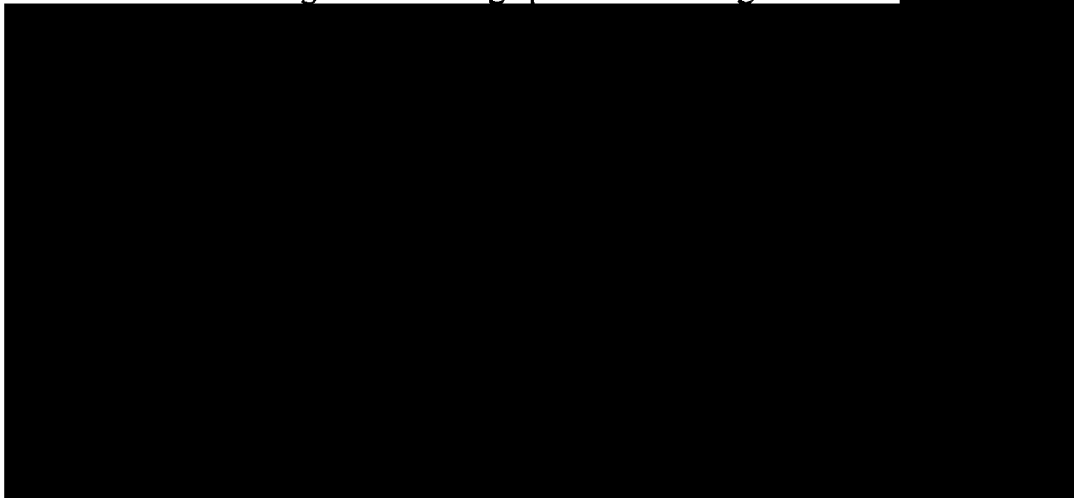
⁴⁵ Douglas Jehl, *Report Warned C.I.A. on Tactics in Interrogation*, The New York Times, Nov. 9, 2005.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Human Rights First, *Command's Responsibility: Detainee Deaths in U.S. Custody in Iraq and Afghanistan* 9 (2006), at 1-3, 9, available at <http://www.humanrightsfirst.org/pubs/Command%20s%20Responsibility.pdf>, (reporting on numerous cases of detainee deaths in which the CIA was implicated and finding that "[d]eaths in which the CIA has been implicated (alone or jointly with Army Special Forces or Navy SEALs) have presented additional problems. Such deaths are required to be investigated by the CIA Inspector General and, if cause exists, referred to the Department of Justice for prosecution. Yet while five of the deaths in custody analyzed by Human Rights First appear to involve the CIA, only a contract worker associated with the CIA has to date faced criminal charges for his role in the death of detainees. Further, the CIA has sought to keep closed the courts-martial of Army personnel where CIA officers may be implicated, and has in military autopsies classified the circumstances of the death. These efforts have encumbered the investigation and prosecution of both CIA officials and military personnel.") (internal citations omitted). Center for Human Rights and Global Justice et. al, *By the Numbers: Findings of the Detainee Abuse and Accountability Project* 16 (2006), available at <http://www.chrgj.org/pubs/By%20the%20Numbers.pdf> (stating that "According to the Department of Justice, twenty cases have been referred to it by the Department of Defense or the CIA's Inspector General"; and "Justice Department officials told DAA Project researchers in April 2006 that one of the twenty persons referred to the Justice Department for prosecution was indicted: David Passaro, a CIA contractor indicted for assault in the case of an Afghan detainee beaten to death in eastern Afghanistan in June 2003. Officials said that seventeen other individuals were still being investigated and that the department had decided not to prosecute two others."); see also *id.* at 3, 21, 26. Jane Mayer, *A Deadly Interrogation: Can the CIA legally kill a prisoner?*, New Yorker, Nov. 14, 2005, available at http://www.newyorker.com/archive/2005/11/14/051114a_fact_mayer (detailing the death following CIA interrogation of "ghost detainee" Manadel al-Jamadi and reporting that "[i]n a subsequent internal investigation, United States government authorities classified Jamadi's death as a 'homicide,' meaning that

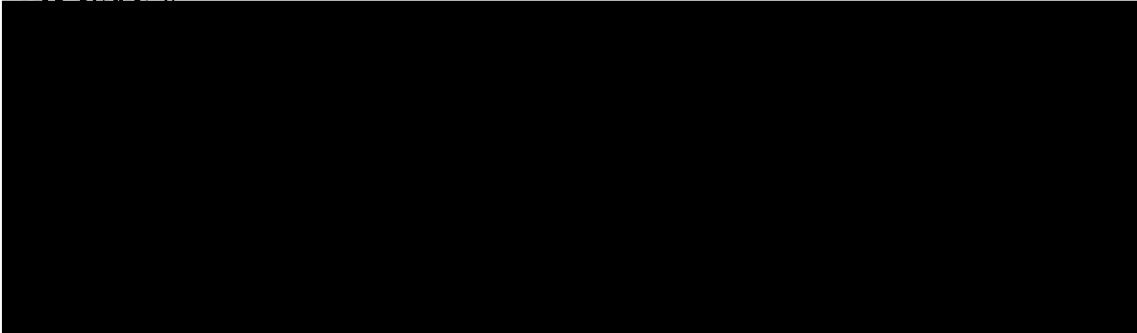
7. Documents establishing and describing operations in foreign locations.



Information about the supposed legal and policy authority for Mr. Mohammad's detention [redacted] is relevant and essential to, inter alia, legal arguments involving a 'totality of circumstances' analysis, legal and factual arguments relating to mitigation, and facts that corroborate his allegations of abuse. Such information includes but is not limited to:

- 7.1. (4 October 2001) Decisions or "authorisations" of the North Atlantic Council, and related multi- and bilateral agreements. At a 4 October 2001 meeting of the North Atlantic Council, the U.S. reportedly convinced its allies to make a number of extraordinary secret decisions that enabled the CIA's special operations and served as a platform for key secret bilateral agreements.⁵¹

it resulted from unnatural causes."). Errol Morris, *The Most Curious Thing*, N.Y. Times, May 19, 2008, available at <http://www.nytimes.com/2008/05/19/magazine/19morris.html> (explaining that in the death of Manadel al-Jamadi, "It was only after the Abu Ghraib photographs were leaked to C.I.D. (the Criminal Investigation Division of the Army) that C.I.D., C.I.A., O.I.G. (Office of Inspector General) and the NCIS (Naval Criminal Investigative Service) started a joint investigation. Eventually the death of al-Jamadi was also taken up by the various military and civil commissions set up to investigate the abuses at Abu Ghraib.").



8. Department of Justice policies and/or practices for conducting law enforcement interviews of former CIA detainees subject to the taint of coercion. Former FBI General Counsel Wainstein told the DOJ OIG that the FBI ultimately decided that its agents could not interview detainees without a “clean break” from other agencies’ use of non-FBI techniques, perhaps in 2003.⁵² In May of 2008, the DOJ OIG issued a report recommending, *inter alia*, that the FBI OGC prepare legal advice addressing the issue of when FBI agents may interview detainees previously interrogated by other agencies using non-FBI techniques, and the circumstances under which FBI agents may use information obtained in interrogations by other agencies that employed non-FBI techniques. According to this report, several drafts of such supplemental policy were prepared by the FBI Office of General Counsel, but none was finalized.⁵³ The DOJ OIG noted that “to the extent that the FBI is involved with interrogating detainees who have been interrogated by the CIA, the issue remains significant.”⁵⁴

8.1. Documents demonstrating the policy and/or practice on the issue of when FBI agents may interview detainees previously interrogated by other agencies using non-FBI techniques, and the circumstances under which FBI agents may use information obtained in interrogations by other agencies that employed non-FBI techniques. The absence of such policy or formalized practice calls into question the effectiveness of any steps taken by the FBI purporting to “attenuate” the taint of coercion from interviews with Mr. Mohammad or any other former CIA detainee. The government should provide Mr. Mohammad with documents demonstrating such policy and/or practice, or stipulate that no such policy and/or practice was in place.

8.2. Records of interviews with FBI or other law-enforcement personnel about the nature, content, and effect of previous interrogations. One process used by the FBI in attempts to “attenuate” interviews has been publicly describe thus: when the FBI initiated interviews with detainees who had been in the custody of entities that may have employed non-FBI interrogation techniques, they would first ask questions for “intelligence purposes”, including, presumably, about previous interrogations. They would then develop a plan for a later, “attenuated” interview designed to gather evidence to use in proceedings and minimize the possible taint of coercion.⁵⁵ Either FBI agents who obtained the statements from Mr. Mohammad that the government seeks to use in evidence relied on

⁵² U.S. Department of Justice, Office of the Inspector General, “A Review of the FBI’s Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq DOJ”, May 2008, redacted version available at [http://www.doi.gov/inspector-general/reports-and-testimony/2008-05-01-a-review-of-the-fbi-s-involvement-in-and-observations-of-detainee-interrogations-in-guantanamo-bay-afghanistan-and-iraq-doj](#), p.75.

⁵³ U.S. Department of Justice, Office of the Inspector General, “A Review of the FBI’s Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq DOJ”, May 2008, redacted version available at [http://www.doi.gov/inspector-general/reports-and-testimony/2008-05-01-a-review-of-the-fbi-s-involvement-in-and-observations-of-detainee-interrogations-in-guantanamo-bay-afghanistan-and-iraq-doj](#), p.365. (Note: our version in database is searchable.)

⁵⁴ *Id.* p.xvii. See also p. 365.

⁵⁵ Statement of Michael J. Heimbach, Assistant Director of Counterterrorism, FBI, at ABA Standing Committee on Law and National 18th Security Annual Review of the Field of National Security Law conference, November 6, 2008, Washington, D.C.; notes of statement on file with Katherine S. Newell.

previously interviews about his treatment at the hands of the CIA, in which case this information in its original record should be given to Mr. Mohammad as possible corroboration of his claims of abuse, or, the government should stipulate that no such record was taken, and the “clean team” is unable to ensure that their interviews were sufficiently distinguished from CIA interrogations to remove the taint of coercion.

- 8.3. Training for FBI agents interviewing persons previously interrogated by other entities using non-FBI techniques. As of 2008, the DOJ OGC had not completed supplemental policy on the issue of “clean teams” (or, steps to “attenuate” interviews). However, the FBI did train its agents on this and other detainee treatment issues prior to their deployment in military zones.⁵⁶ FBI agents interviewing detainees held by the CIA or by foreign governments may have had similar training or instructions.

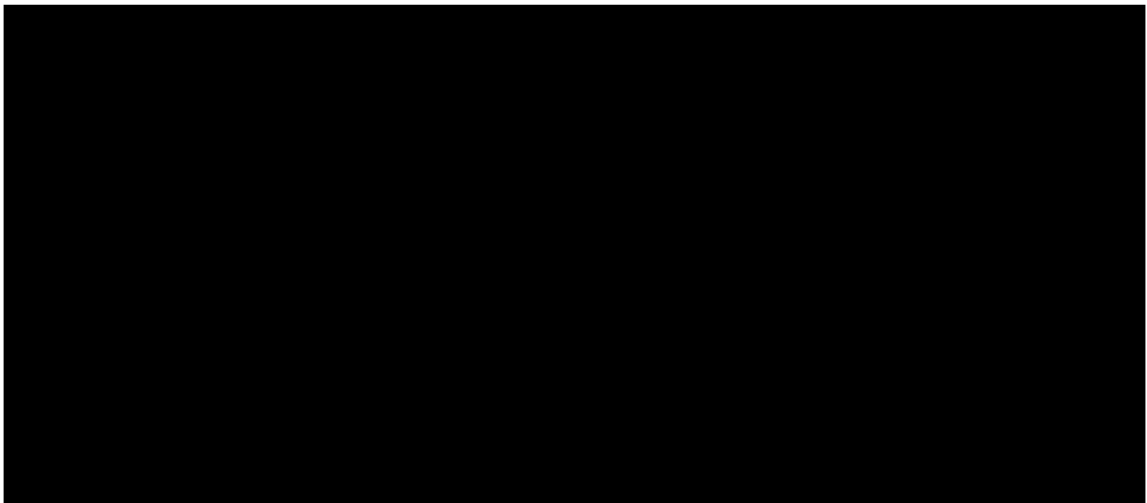
⁵⁶ U.S. Department of Justice, Office of the Inspector General, “A Review of the FBI’s Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq DOJ”, May 2008. redacted version available at <https://www.foia.gov/foia/p/168>, p.xvii; p. 168 et seq. (Note: our version in database is searchable.)

Attachment H

ATTACHMENT H

To the extent any of the documents listed below may be called or referred to by another name or names, the Accused respectfully requests that any order entered by this Court be sufficiently broad to encompass the same.

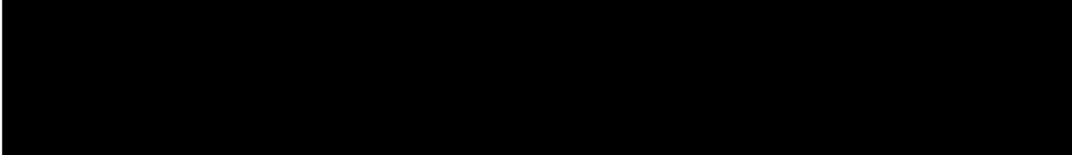
1. Any and all photographs, video recordings, or audio recordings showing the capture, detention, transfer, interrogations, interviews, and debriefings of the Accused; any and all transcripts of any such recordings; and any other photographs or recordings of the Accused made from the time of his capture to the present.
2. Any and all photographs, video recordings, or audio recordings of Accused made prior to his capture and transcripts of any such recordings, including but not limited to recordings and transcripts of telephone conversations or other electronic or radio communications; recordings and transcripts in which other persons mention or refer to Accused; or any other recordings or signals interceptions that contain information about the Accused.
3. Any and all equipment or implements used during Accused's detention and interrogation (or identical versions of the same) including but not limited to:



- g. any other instruments, devices, substances, materials or other things used during detention and interrogation.
4. All text or recordings containing communications from, to, or between U.S. government personnel referring to the Accused, whether naming the Accused by his correct or similarly spelled name, by any alleged aliases or nicknames, or by any cryptonym or nickname assigned to him, including but not limited to:
 - a. Any and all such communications between CIA executive directors, officers, analysts, support staff, medical staff, security personnel, pilots and crew on transport planes, or any other CIA personnel, contractors, or agents.

- b. Any and all such communications between CIA stations and bases or between CIA stations or bases and CIA headquarters or regional offices or stations; including but not limited to:
 - i. Intelligence Operational Cables, in which CIA personnel, stations, or bases report on intelligence gathering activities and about intelligence gathering events in which they are involved.
 - ii. Intelligence Reports ("IRs"), in which CIA personnel, stations, or bases detail facts and information gathered pursuant to CIA operations.
 - iii. Accompanying Operational Cables ("AOCs"), in which CIA personnel, stations, or bases report more specifically on operations or steps taken during operations and request authorizations (or, when sent from headquarters, grant authorizations) for additional action;
 - iv. Any and all other forms of communication.
- c. Any and all such communications from CIA stations or bases or CIA headquarters to any and all personnel in the executive branch and its agencies, including:
 - i. The President;
 - ii. All personnel in the Office of the President;
 - iii. The Vice-President;
 - iv. All personnel in the Office of the Vice President;
 - v. The National Security Advisor, Deputy National Security Advisors, and all personnel in the Office of the National Security Advisor;
 - vi. All personnel in the National Security Council;
 - vii. The Attorney General;
 - viii. All personnel in the Office of the Attorney General and all personnel in the Department of Justice;
 - ix. The Director of the Federal Bureau of Investigation (FBI)
 - x. All FBI personnel
 - xi. The Secretary of Defense;
 - xii. All personnel in the Office of the Secretary of Defense and all Department of Defense personnel
 - xiii. The Secretary of State;
 - xiv. All personnel in the Office of the Secretary of State and all State Department Personnel.
- d. Any and all such communications from CIA stations or bases or CIA headquarters to any and all personnel or agents of any foreign government;
- e. Any and all such communications from or to other U.S. government personnel or offices, including but not limited to all offices listed in paragraph (c) above, to any and all personnel or agents of any foreign government;
- f. Documents to be protected pursuant to the preceding paragraph should include "Exclusive For" documents—communications from CIA printed out for sole

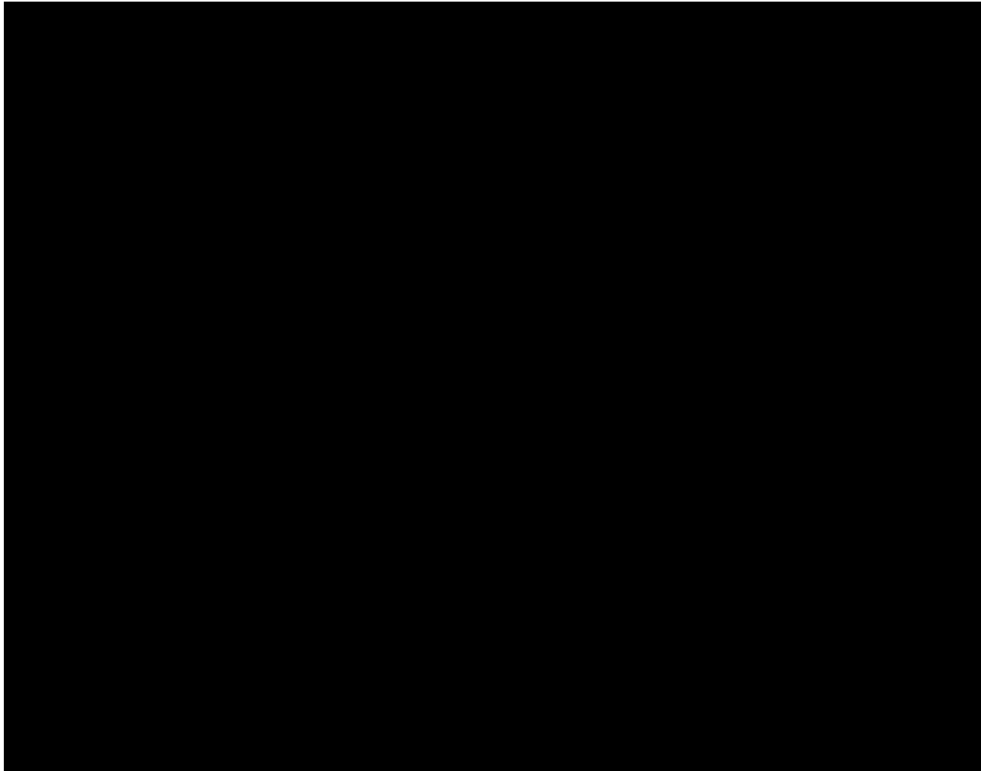
review by particular executive officers such as the President, Vice President, and National Security Advisor. Documents should include communications between and within any joint or combined agency group, or between the CIA and any other law enforcement, intelligence or military agency. Documents should also include any files kept in or by the "Special Detainee File Group." Documents should include communications sent from stations and bases in countries in which the Accused was held



- g. Any and all other such communications contained in e-mail messages to, from, or between CIA personnel, including executive directors, officers, analysts, support staff, medical staff, security personnel, pilots and crew on transport planes, or any other CIA personnel, contractors, or agents.
- 5. Any and all other documents similar to those discussed in section (4) above, whether communicated by cable or e-mail or maintained at detentions sites, including but not limited to:
 - a. Memoranda, notes, or reports discussing the Accused, his interrogations, or intelligence he provided during his detention;
 - b. Interrogation logs or records;
 - c. Notes taken by interrogators, analysts, or other personnel involved in interrogating the Accused or analyzing the information produced by the interrogations of the Accused;
 - d. Interrogation plans;
 - e. Approvals for interrogation or detention plans;
 - f. Documents relating or referring to detention conditions, systems for rewards and punishments, privileges, and other factors relating to detention conditions;
 - g. Legal memoranda discussing interrogation plans for the Accused or legal issues surrounding such interrogation plans; and
 - h. Any and all other reports detailing any aspect of the Accused's detention, treatment, or interrogation.
- 6. Any and all numbers, aliases, or cryptonyms assigned to identify the Accused, including but not limited to cryptonyms used in cables, e-mails, intelligence reports, and ISN numbers, other registration numbers, and numbers assigned by guards.
- 7. Any and all numbers, aliases, or cryptonyms assigned to identify the other detainees who made allegations about Accused, including but not limited to cryptonyms used in cables, e-mails, intelligence reports, and ISN numbers, other registration numbers, and numbers assigned by guards.

8. Any and all aliases or cryptonyms assigned to identify the stations or bases at which the Accused was detained or interrogation.
9. Any and all aliases or cryptonyms assigned to identify capture, transfer, detention, and interrogation operations involving the Accused.
10. Any and all reports sent to any U.S. governmental agency by the International Committee of the Red Cross relating or referring to the detention system in which Accused was held or to the Accused himself.
11. Any and all notes made during interrogation by analysts, interrogators, supporting psychologists, and other CIA personnel, and any reports written by those personnel about interrogations or about the Accused.
12. Any and all medical records or notes about Accused made or recorded by any medical personnel, including by doctors, nurses, physicians' assistants, psychiatrists, psychologists, including any and all records or notes about Accused made or recorded by personnel who were or had been employed by the Department of Defense in the Joint Personnel Recovery Agency (JPRA) or any Survival, Evasion, Resistance or Escape (SERE) school operated by the Department of Defense.
13. Any and all other medical records, including those relating to Accused's capture. (As the respondent is aware, detainee medical records were reportedly available to some government interrogators, including psychological records and evaluations. In addition, all detainees at Guantanamo undergo a physical examination immediately upon arrival at Guantanamo.)
14. Any and all other notes, documents, reports, memoranda, recordings, transcripts, or materials that were created or prepared by CIA personnel (including contractors) in relation to the detention, interrogation, or medical care of the Accused.
15. Any and all lists or other documents recording personnel at detention or interrogation sites at which Accused was detained and interrogated, including but not limited to staffing lists, contact lists, personnel logs, visitor logs, or any other documents in which the names or aliases of personnel are contained.
16. Any and all personnel lists, other lists, or other documents containing the names of personnel assigned or working with CIA programs or stations involved, in any manner whatsoever, in the detention, transfer, or interrogation of the Accused, including but not limited to staffing lists, contact lists, personnel logs, visitor logs, or any other documents in which the names or aliases of such personnel are contained.
17. Names and contact information for all individual or corporate contractors, contracting companies, and other agents of CIA who were involved, in any manner, with the capture, transport, detention, or interrogation of the Accused, or in providing the Accused with human necessities such as food and water, or health care.

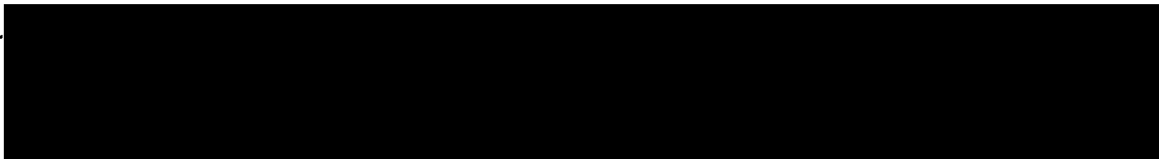
18. Insofar as they relate to any aspect of the Accused's time in CIA or military custody, all documents relating or referring to services rendered by government contractors, whether companies, corporations, partnerships, or individuals, including but not limited to the following:



Documents in this item should include any and all contracts (including any addenda), memoranda of understanding, documents relating or referring to contracts, communications between government agencies and the contracting entities, and any other documents in the possession of the respondent that refer or relate to the contract, the services to be rendered by the contractor, or to any aspect of the Accused's experience in CIA or military custody.

19. Any other documents containing information about the Accused, including "Knowledgeability Briefs," Prisoner Dossiers, or records maintained by interrogation teams or supporting expert teams.

20.



21. Any and all letters or other correspondence or mail to and from the detainees, whether when in CIA or military custody and whether redacted or un-redacted; in all cases in

which redactions were made the Respondent should provide both the original and redacted copy of the correspondence.

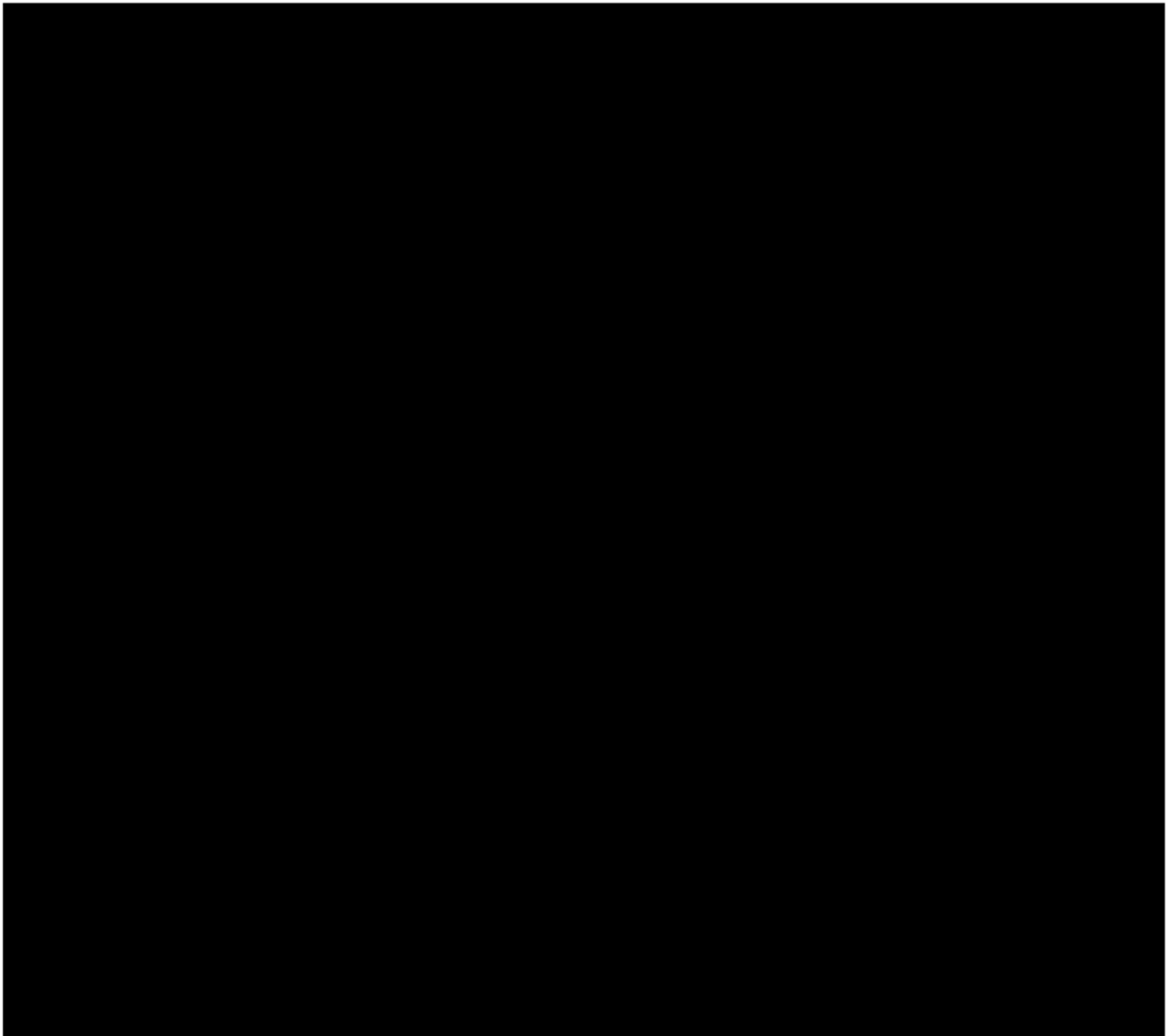
22. Any and all materials that might tend to exculpate the Accused or other persons currently detained by the United States, including but not limited to:
 - a. Communications between government personnel or between government personnel and the Accused, including communications in which personnel state that they were aware that the Accused may have made false admissions during interrogations.
 - b. Other notes, documents, recordings, transcripts or materials relating to the detention or interrogation of other CIA detainees which contain information about the Accused; or any other documents containing information which might tend to exculpate the Accused.
23. Any other documents, materials, notes, intelligence reports, e-mails, or any other documents or materials produced by government personnel or its agents relating or referring to the Accused, whether by name, alias, or cryptonym, including but not limited to documents created by or sent to personnel within CIA, FBI, NSA, NSC, Department of State, and the White House.

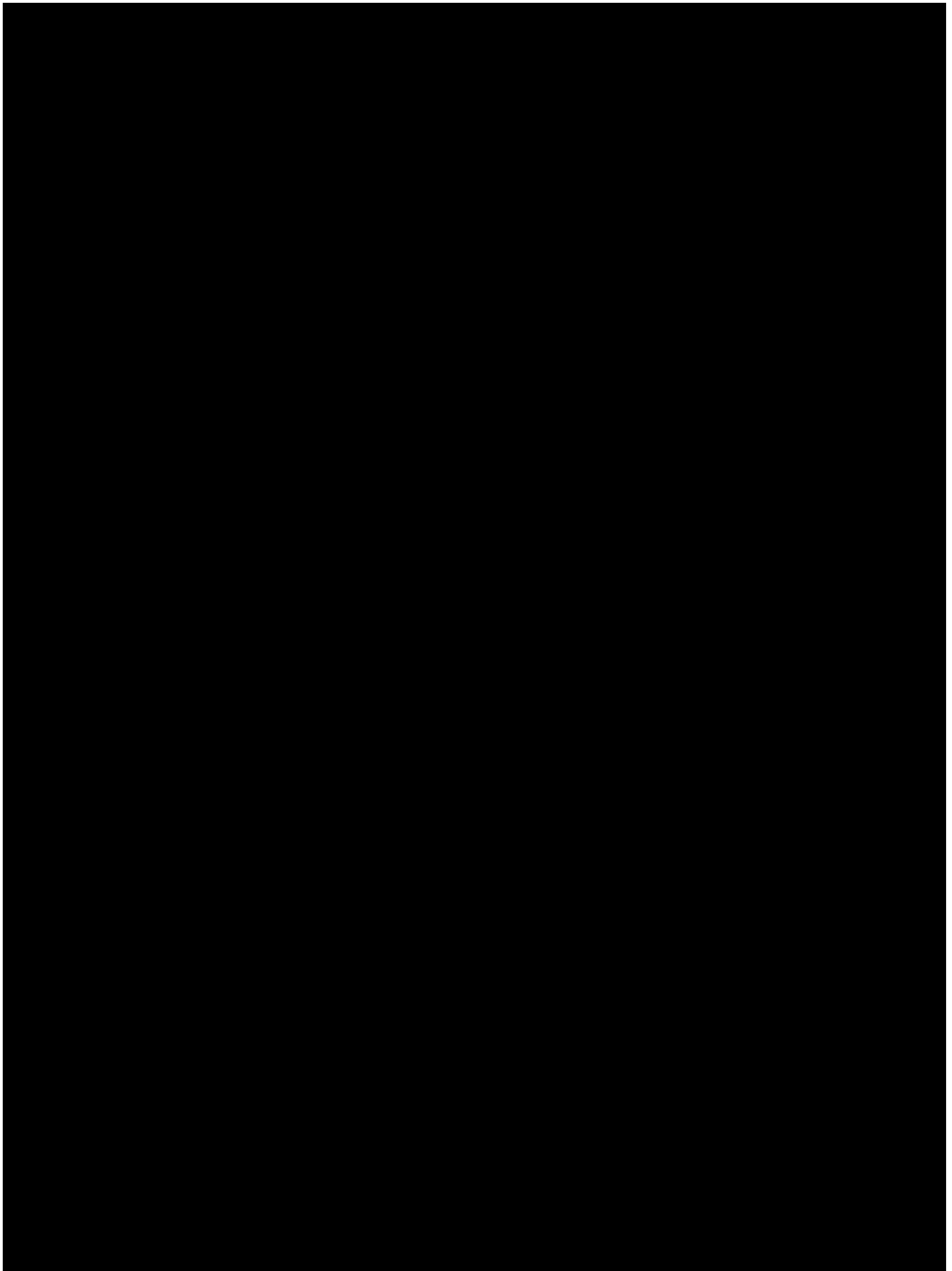
Attachment I

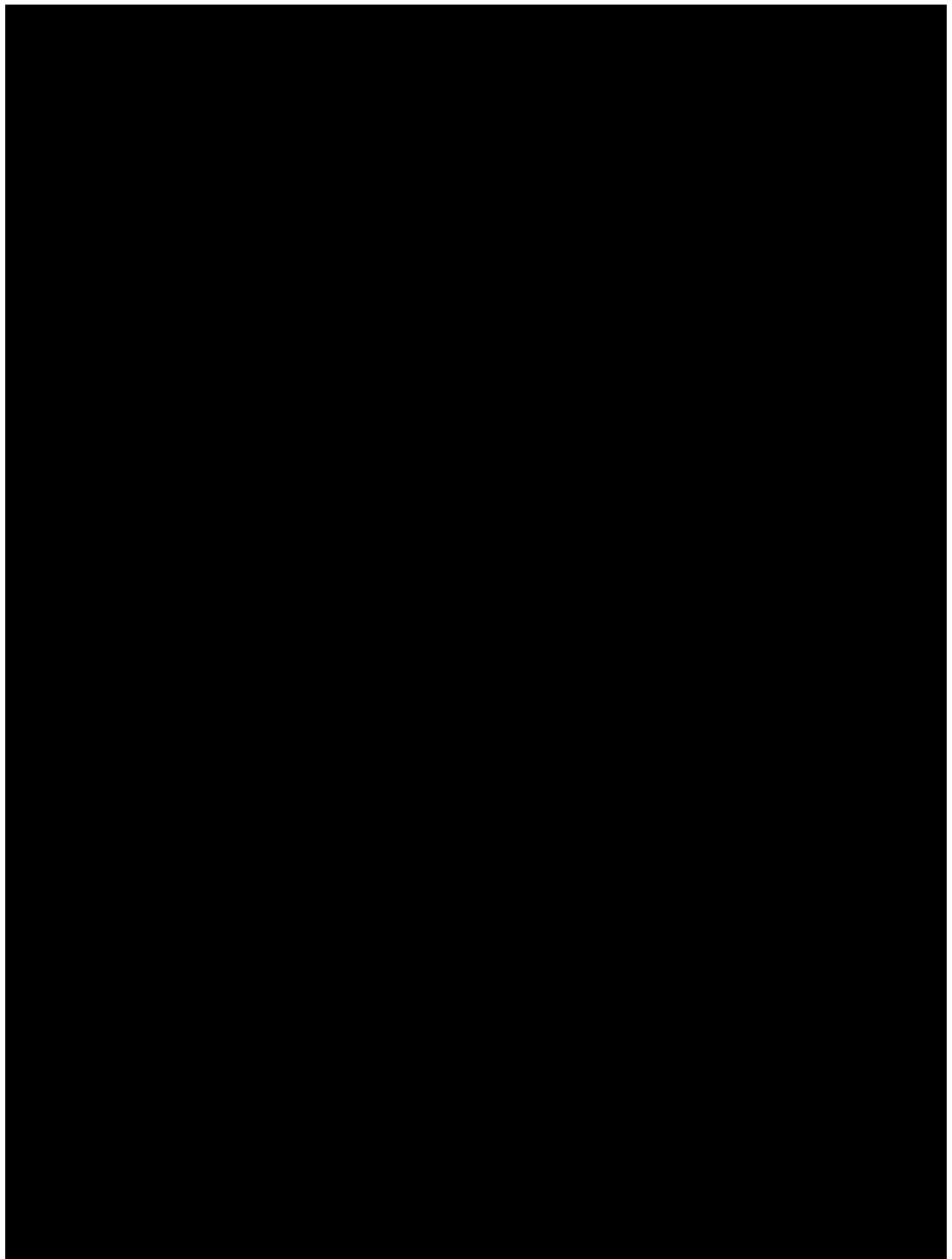
ATTACHMENT I

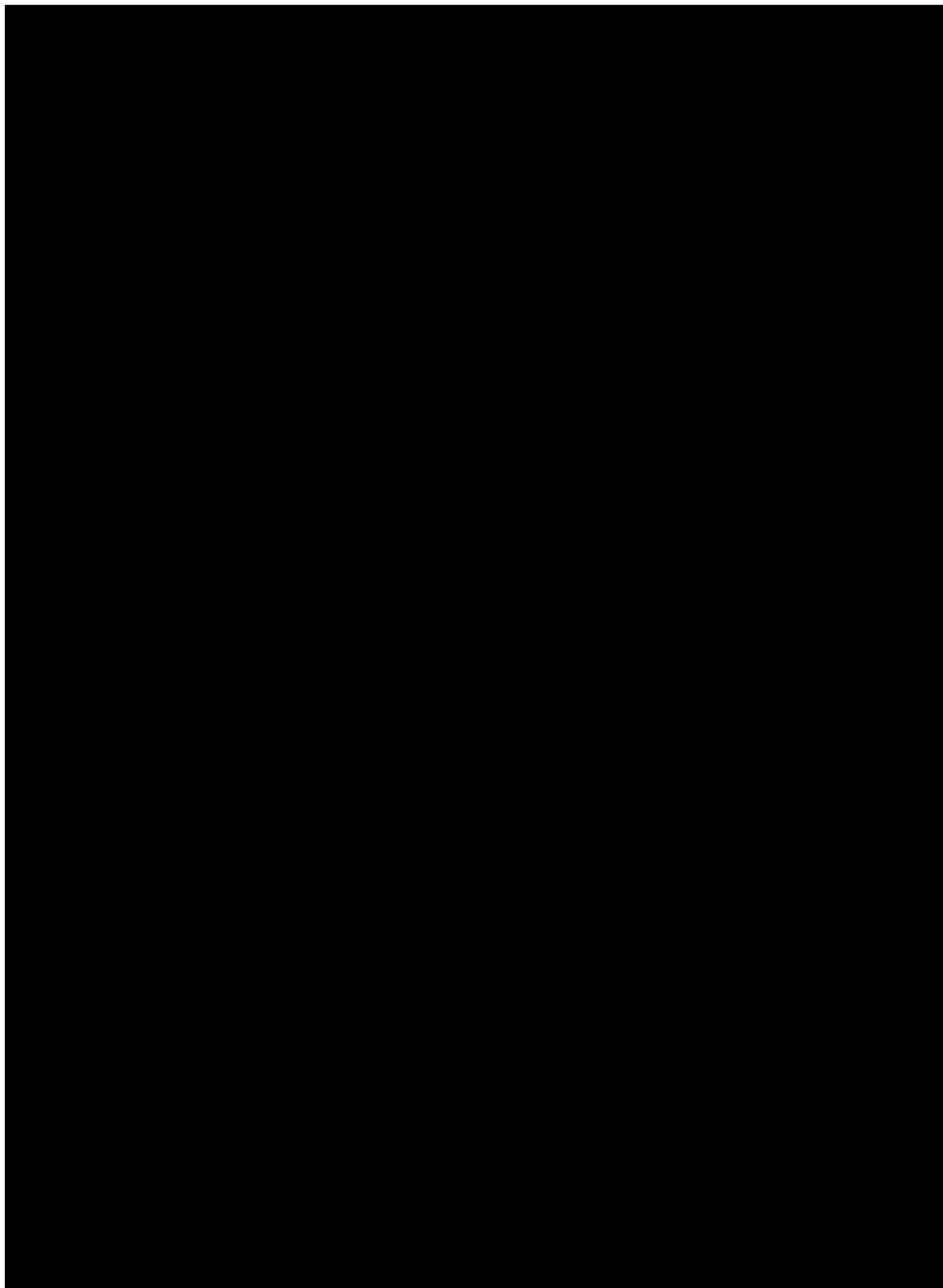
Open source materials have established Mr. Mohammed was captured in Pakistan in early March 2003 [REDACTED] thereafter he was transferred into CIA custody. From early March 2003 to September early 2006 he was detained in a highly secret CIA detention and interrogation program. On information and belief, U.S. government personnel referred to the CIA detention program as the "High Value Detainee program" ("HVD"). The program was operated in connection with the CIA Counter-Terrorism Center (CTC), and the CIA Special Activities Division took the primary role in operating detention centers, transporting detainees, providing guards and other personnel to undertake physical tasks, and handling other basic operational details. HVD and CTC personnel took a primary role in formulating interrogation plans, analyzing information obtained in interrogations, and writing intelligence reports and other communications about the results of interrogations.

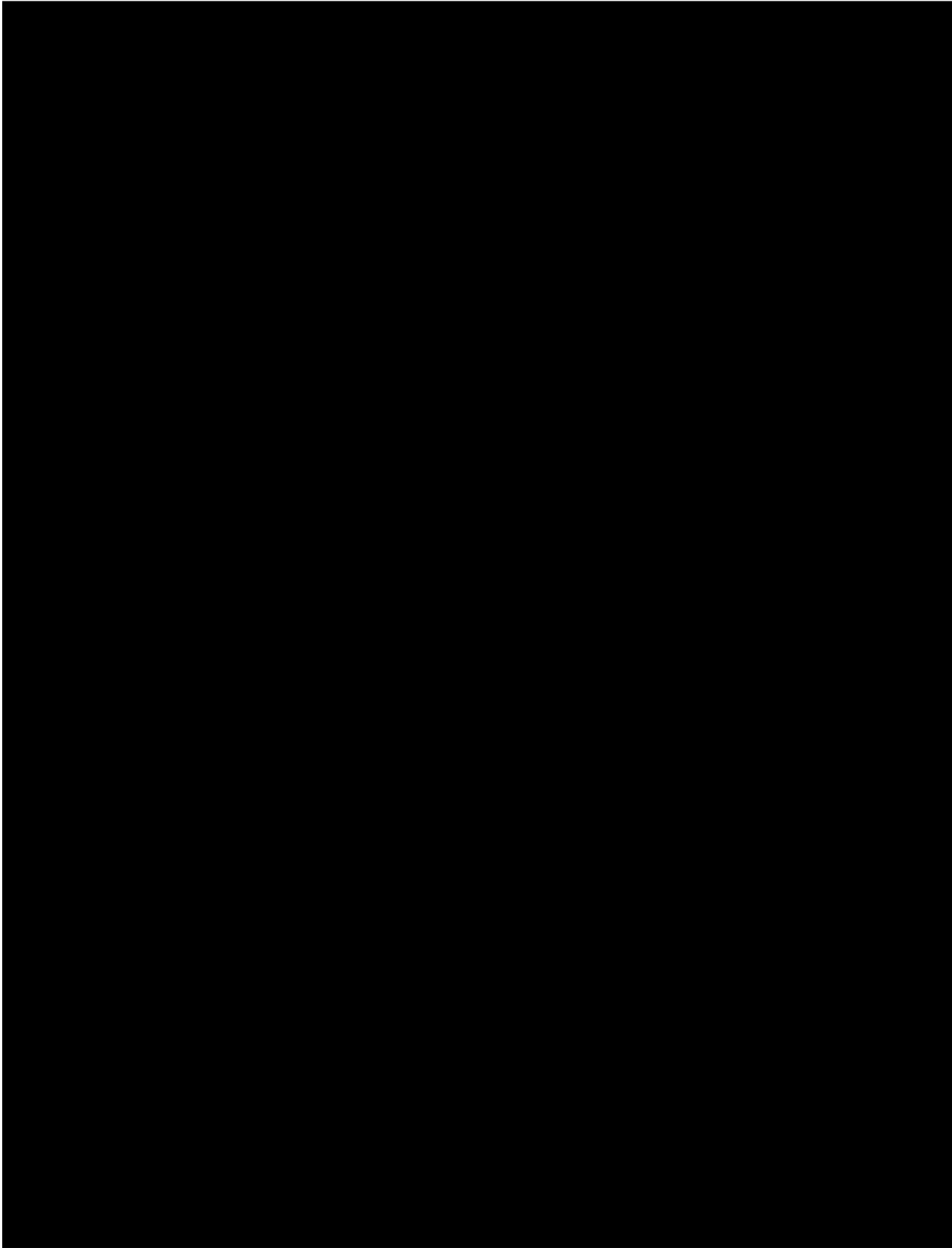
On information and belief, the following persons, among others not yet identified by name, have direct knowledge and can testify about the detention and interrogation of the Accused in the HVD program from March 2003 to September 2006:

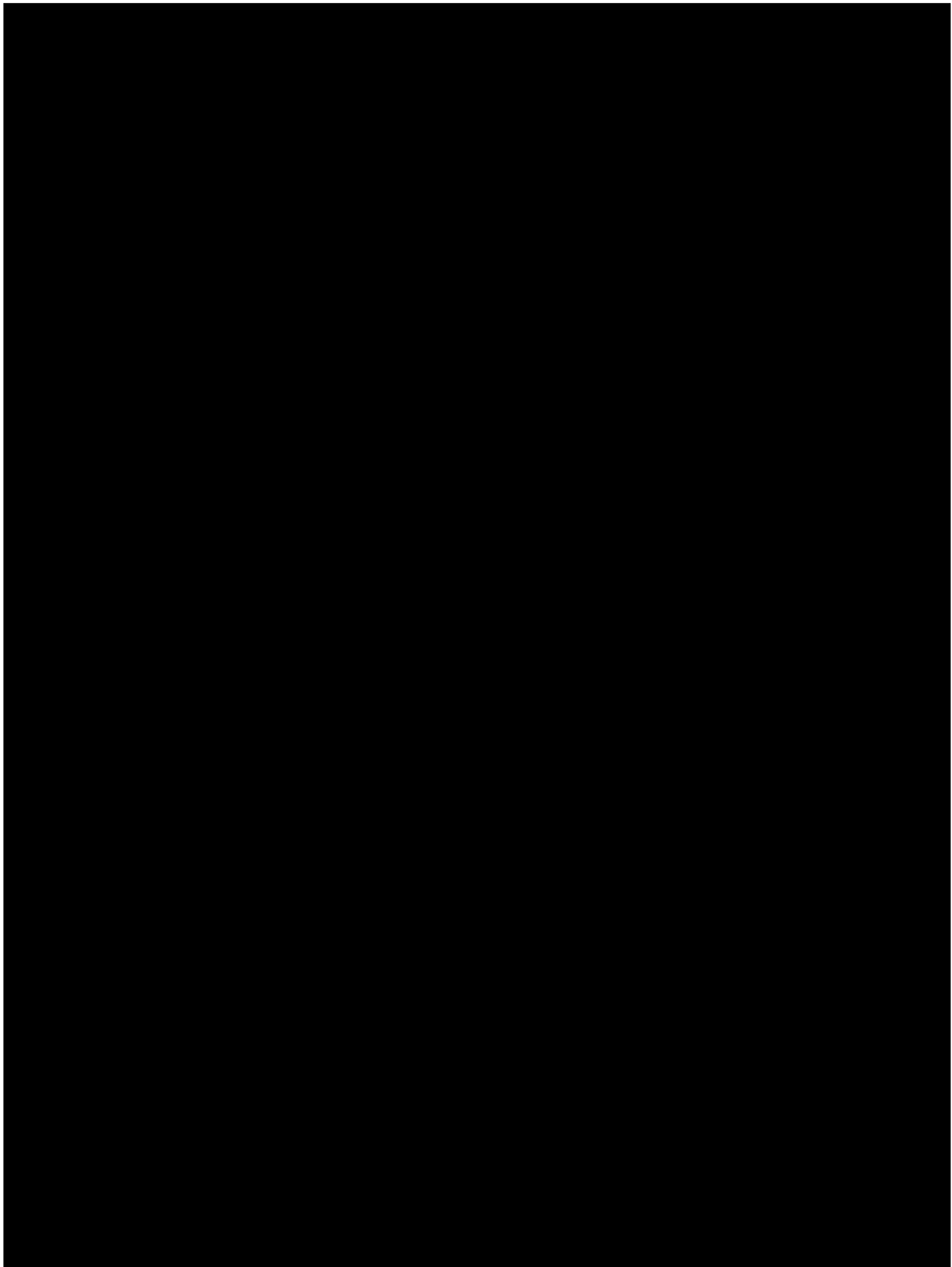


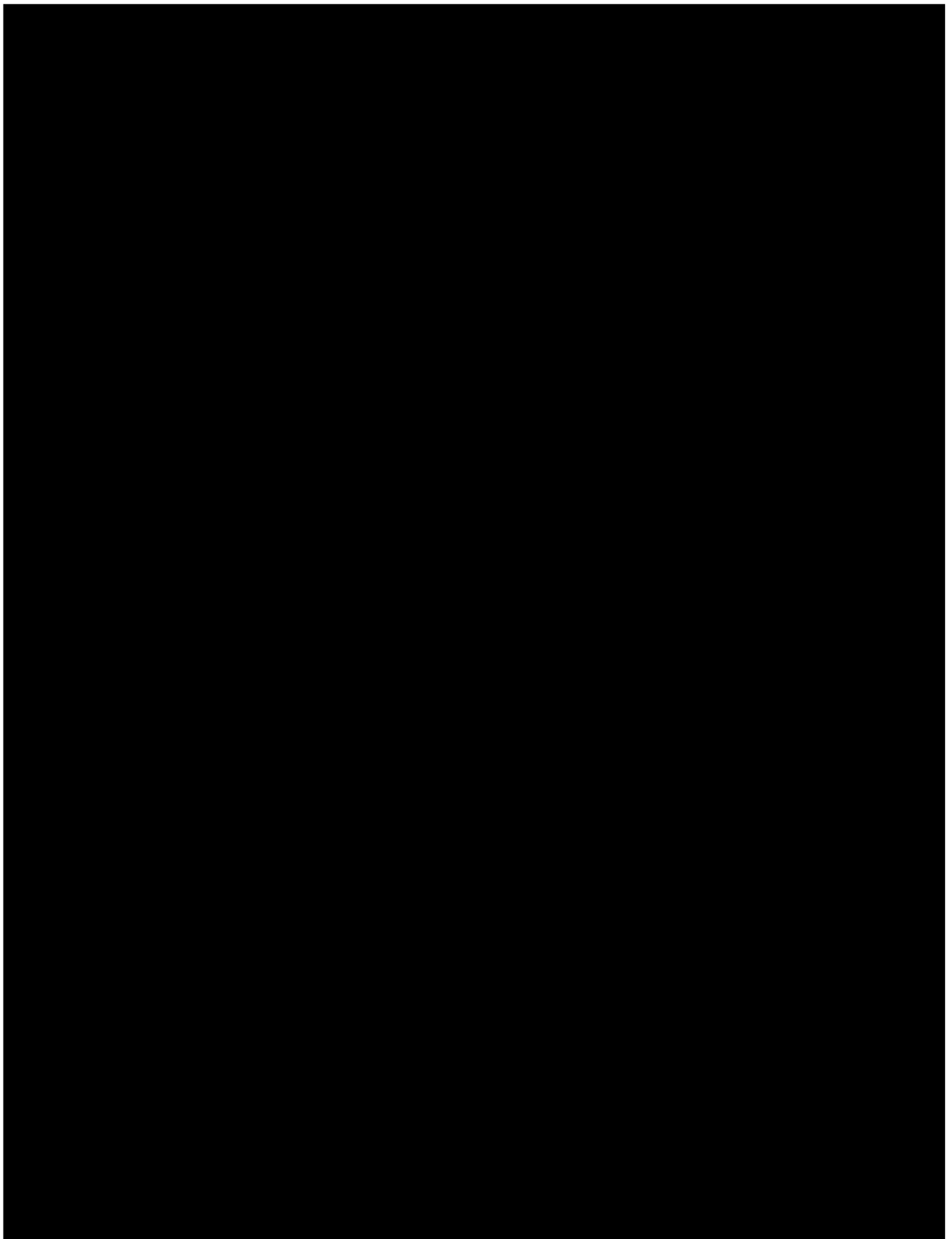


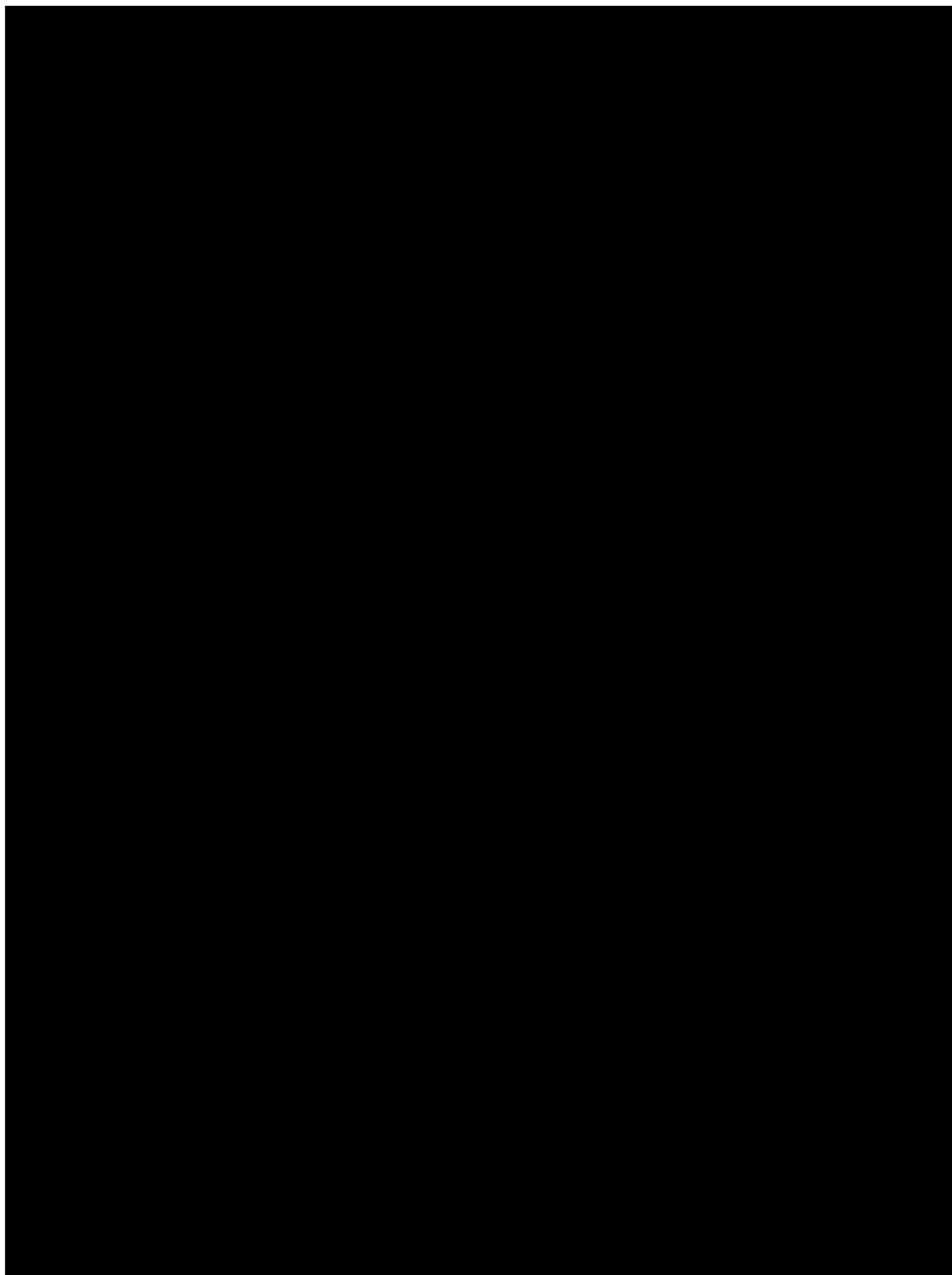


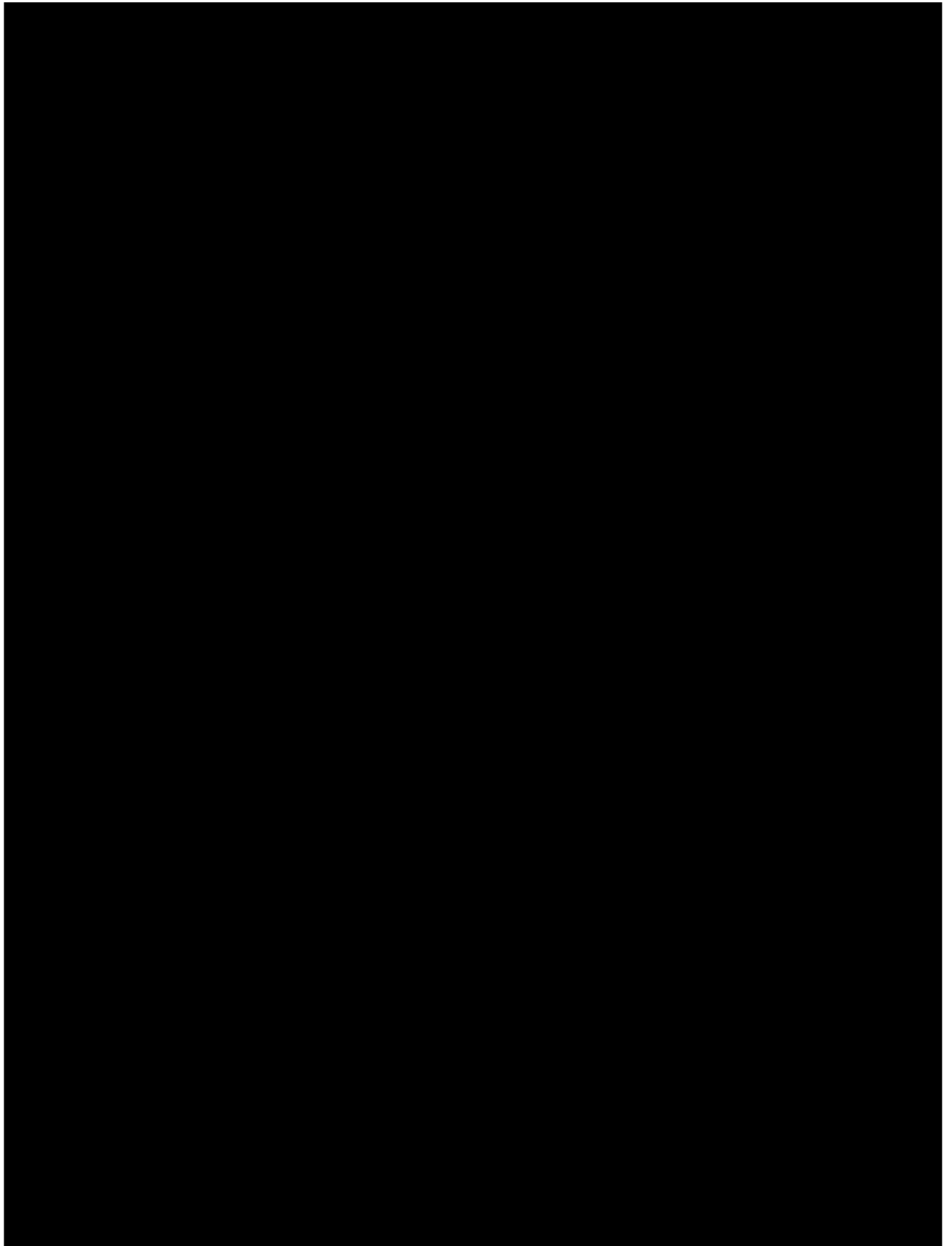


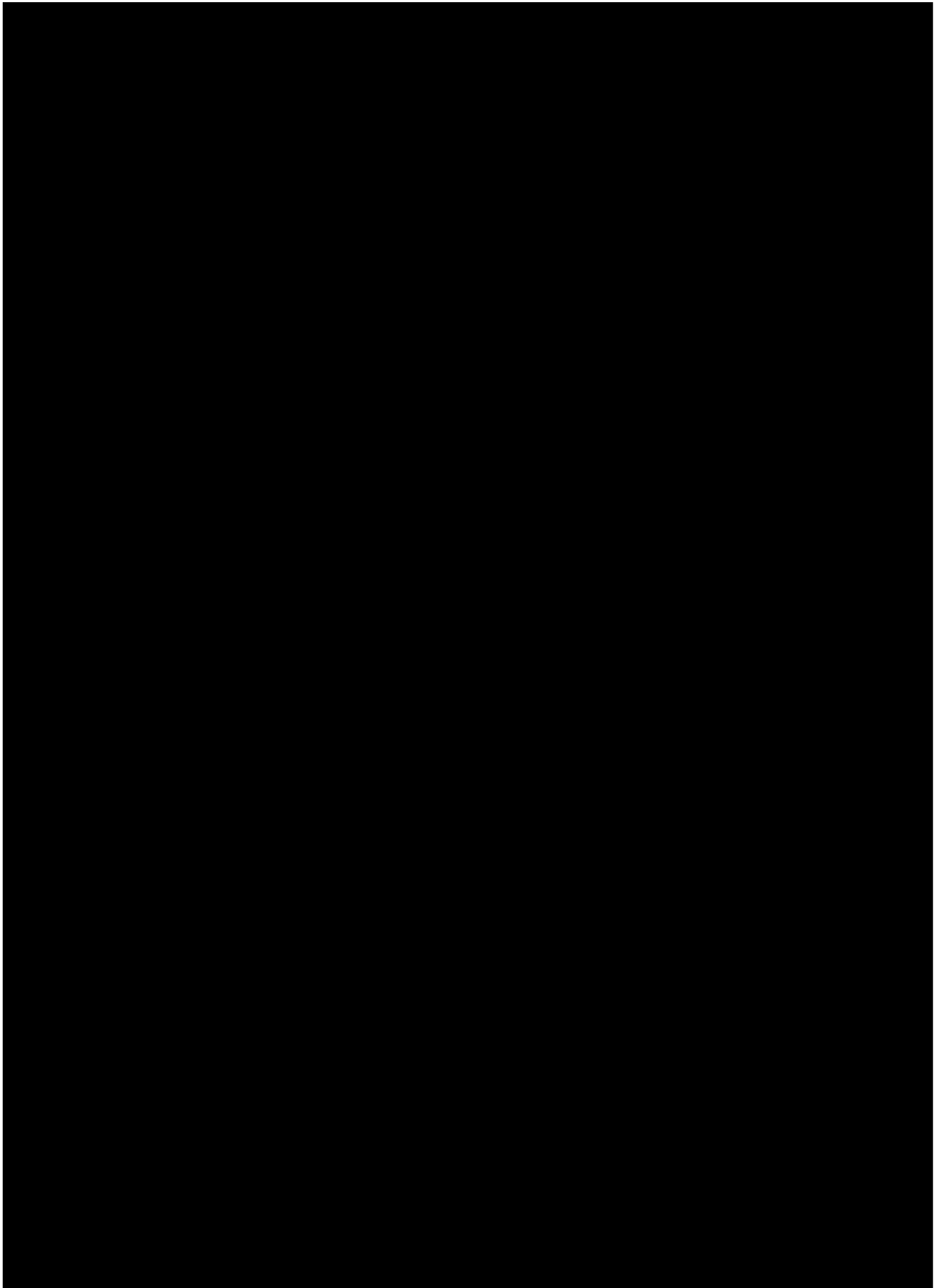


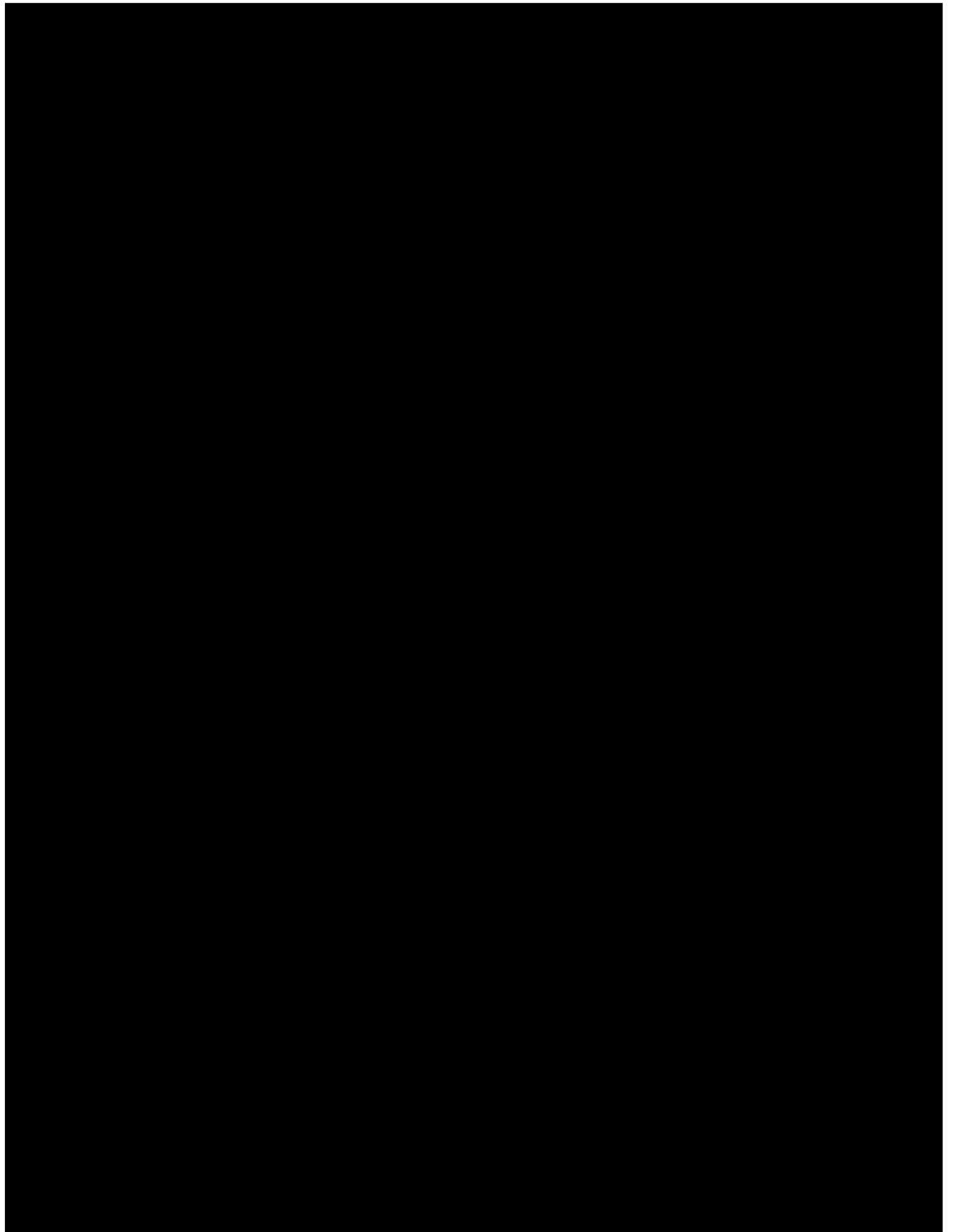


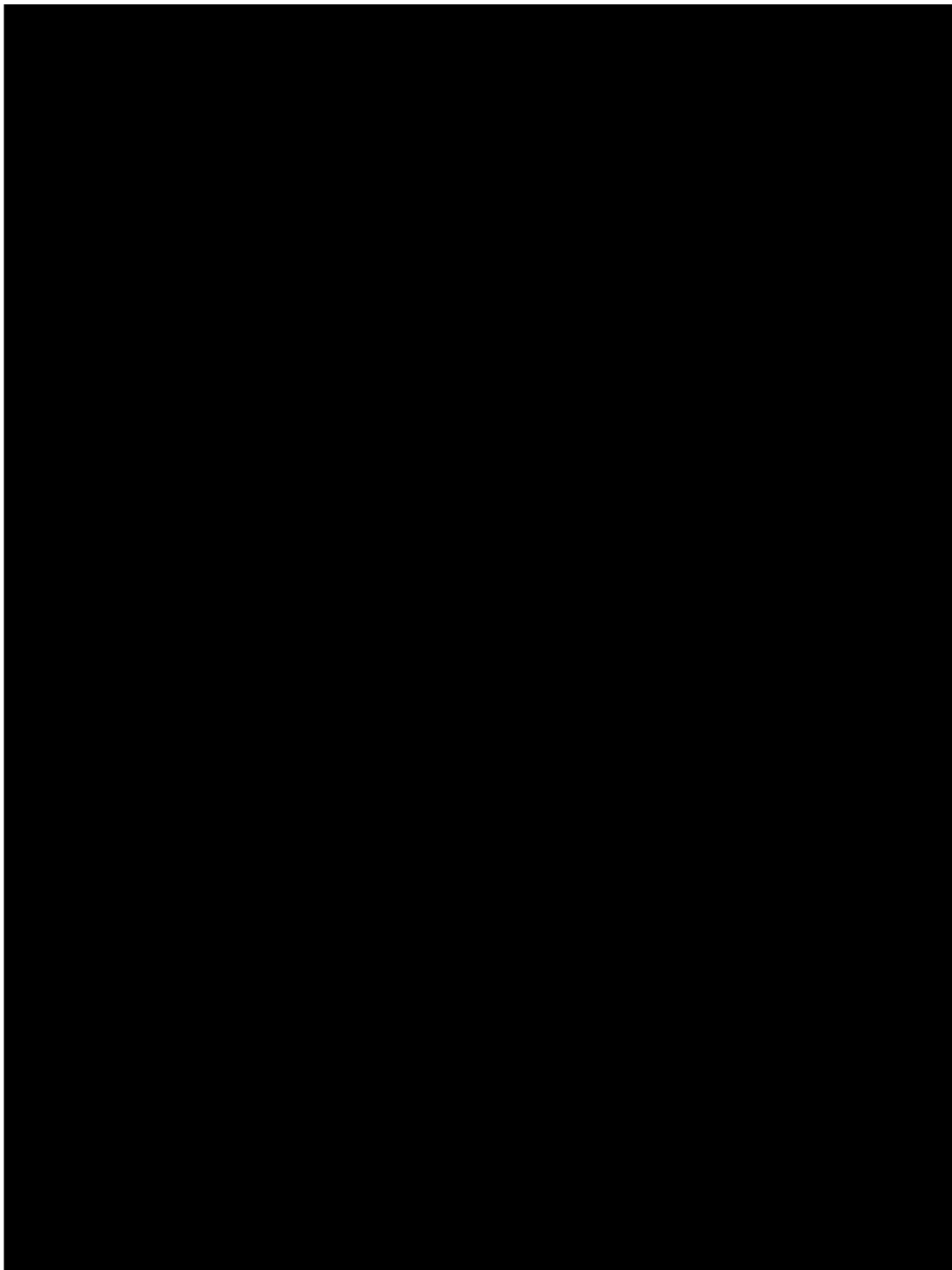


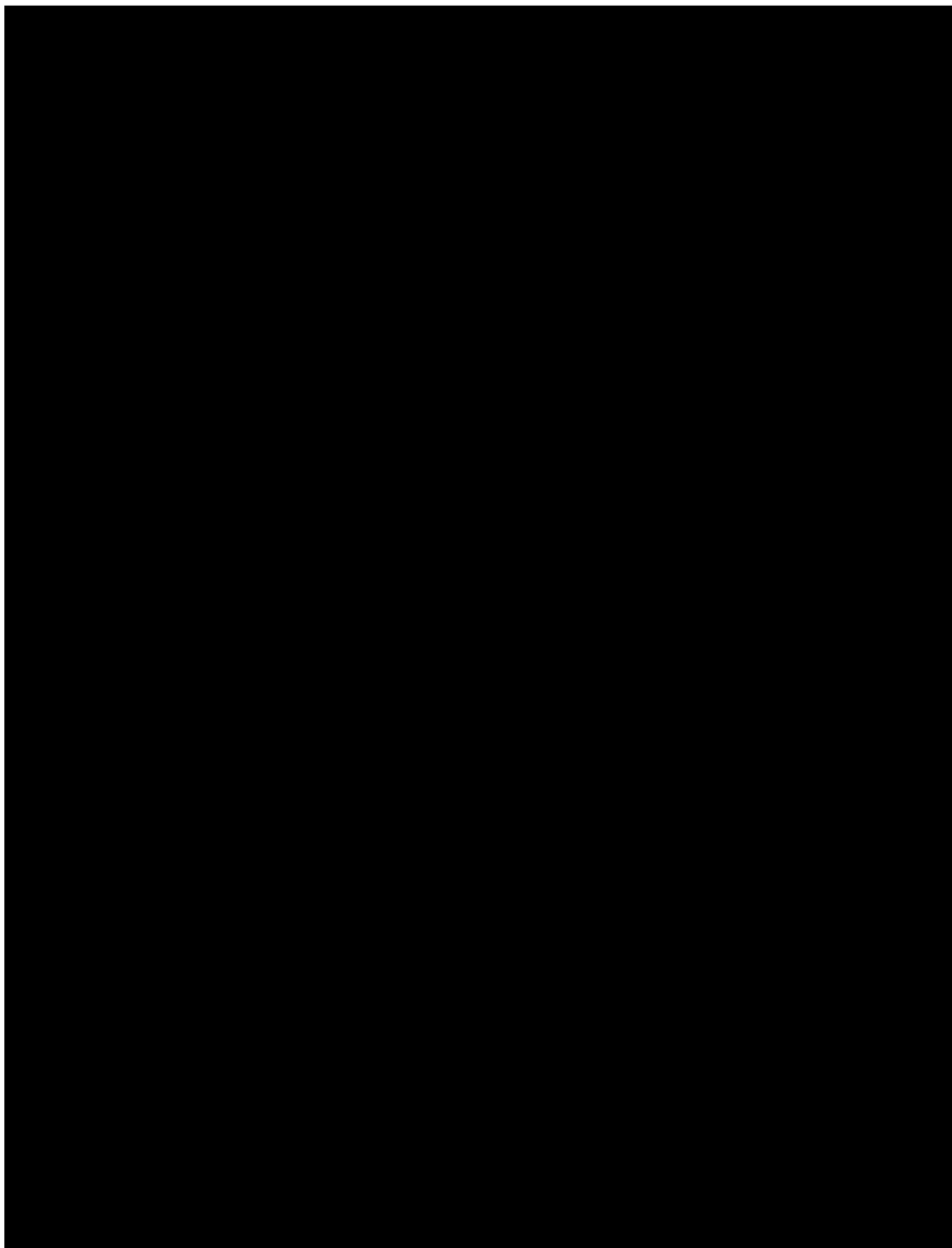


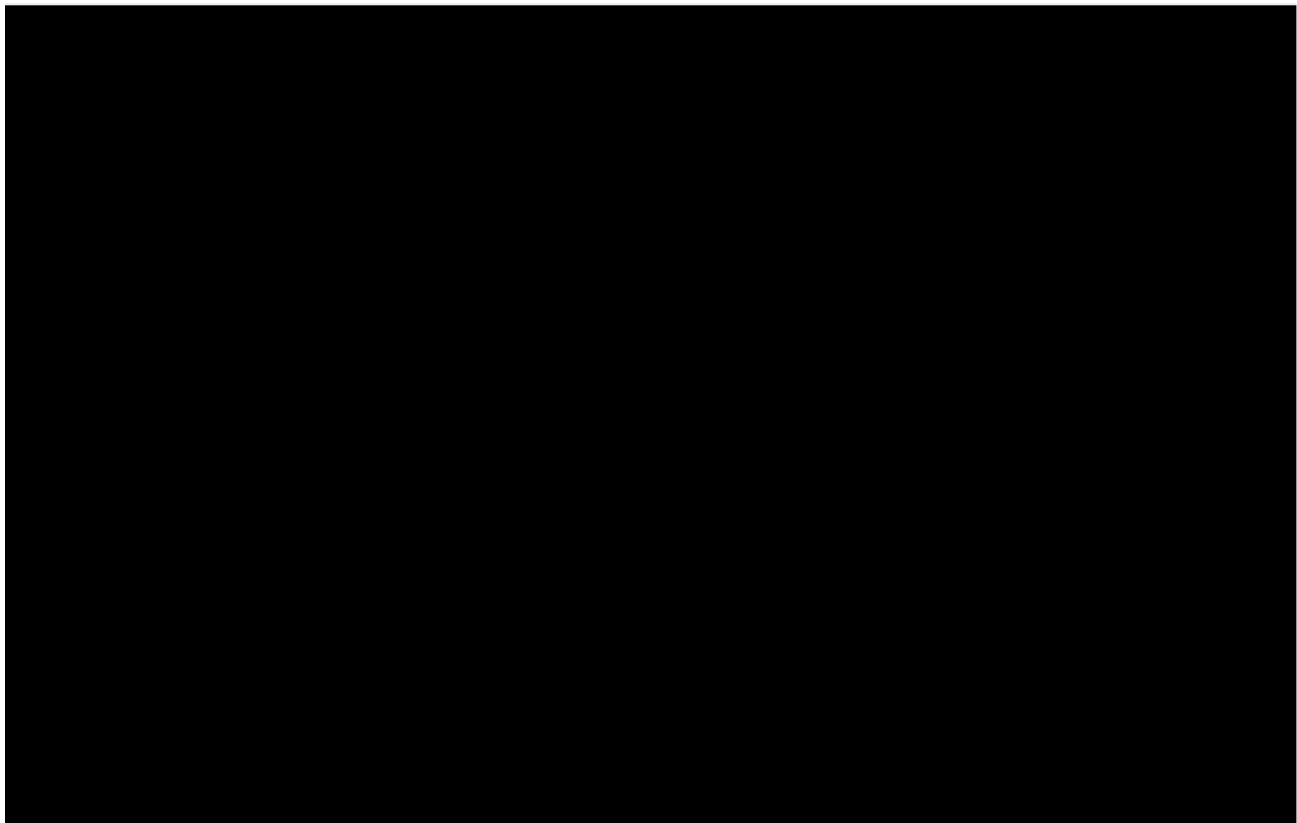












On information and belief, the following persons also have extensive knowledge of the detention and interrogation of the Accused by CIA:

Michael Hayden, current CIA director.

Porter Goss, Director of CIA September 2004 to May 2006..

Albert Calland, III, Deputy Director of CIA mid 2005-2006.

George Tenet, Director of CIA until 2004.




John Edward McLaughlin, Deputy Director of the CIA 2000-2004 (Acting director from July-September 2004 after Tenet and before Porter Goss). Located in DC area.

Alvin Bernard ("Buzzy") Krongard, Executive Director of the CIA from 2001 to 2004.

Kyle Dustin ("Dusty") Foggo, Executive Director of the CIA from approximately 2004 until mid 2006, retired, convicted of CIA contract bribery-related charges.

Michael Morell, Associate Deputy Director of the CIA (ADD/CIA) from 2006 to early 2008 (the position replacing the Executive Director position above); now Director for Intelligence. Morell was earlier an executive assistant to DCI (Tenet) and worked on the team producing PDBs for President Bush.



Carmen Medina, Associate Director for Intelligence from 2005 possibly to present.



Attachment J

ATTACHMENT J

DOCUMENTS FROM THE CENTRAL INTELLIGENCE AGENCY ("CIA")

1. Any and all documents reflecting that in January 1996 the intelligence community learned of a planned suicide attack by Sheikh al-Rahman to fly to the U.S. from Afghanistan and attack the White House.
2. Any and all documents reflecting that in October 1996 the intelligence community learned of Iranian plot to hijack a Japanese plane over Israel and crash in Tel Aviv.
3. Any and all documents reflecting that in July 1998 the intelligence community learned that Osama Bin Laden was considering attacks in the U.S. and provided this information to senior government officials.
4. Any and all documents reflecting that in September 1998 the intelligence community obtained information that an Osama Bin Laden operative might try to fly an explosive-laden plane into a U.S. airport.
5. Any and all documents reflecting that in October 1998 the intelligence community learned that al-Qaeda was trying to set up a cell in the U.S.
6. Any and all documents reflecting that in November 1998 the intelligence community learned that an Osama Bin Laden cell was attempting to recruit a group from the U.S. to travel to the Middle East for training to strike domestic targets, that Osama Bin Laden placed rewards for assassinating four top intelligence agency officers, and that the Turkish Kaplancilar planned suicide attacks to mark the death of Ataturk.
7. Any and all documents reflecting the CIA's reports assessing that Osama Bin Laden was planning attacks against U.S. targets (prepared on or about December 1998).
8. Any and all documents reflecting information gained by the CIA on or about January 1999 that Iraq had a suicide pilot to use against British and U.S. forces in the Persian Gulf; and any documentation that led to the CIA ultimately deciding that this was unlikely.
9. Any and all documents reflecting that in January 1999 the intelligence community obtained information that Osama Bin Laden planned an attack on government facilities in Washington D.C. and New York City.

10. Any and all documents reflecting that in March 1999 the intelligence community learned that an al-Qaeda member (a U.S. Citizen) was to fly a hang glider into the Egyptian Presidential Palace and detonate explosives, but was arrested overseas.
11. Any and all documents reflecting the CIA's preparation of, and the President signing, a document stating that Osama Bin Laden's January 1998 statement was a "de facto declaration of war".
12. Any and all documents reflecting that in August 1999 the intelligence community learned that Osama Bin Laden targeted the Secretary of State, Secretary of Defense and the DCI.
13. Any and all documents reflecting that in September 1999 the intelligence community learned that Osama Bin Laden was planning to attack landmarks in California and New York City.
14. Any and all documents reflecting the CIA's knowledge of Osama Bin Laden sending operatives from the Middle East and Asia to Malaysia; the CIA's surveillance of the same, including but not limited to information that Khallad, al-Midhar and al-Hazmi were at such a meeting in December 1999.
15. Any and all documents reflecting that in December 1999 al-Midhar and al-Hazmi met with Khallad in Malaysia and then traveled to the U.S.
16. Any and all documents reflecting that in January 2000 the CIA followed people in Kuala Lumpur to a meeting of known terrorists and learned that some of those individuals left Kuala Lumpur and went to Bangkok.
17. Any and all documents reflecting that in January 2000 the CIA knew that Khalid al-Midhar and Nawaf al-Hazmi were in the U.S. including knowledge of their visas, knowledge that they were in Los Angeles, and they met with Khallad in Malaysia.
18. Any and all documents reflecting that in January 2000 numerous CIA officers in different divisions accessed one or more documents that reported Khalid al-Midhar's passport contained a multiple entry Visa for the U.S. and that Nawaf al-Hazmi had departed Thailand on a flight bound for Los Angeles.
19. Any and all documents reflecting the January 2000 Osama Bin Laden millennial threat executive briefing summary provided to the FBI director contained a note on al-Midhar indicating that he had arrived in Kuala Lumpur, but did not refer to the Visa information.

20. Any and all documents reflecting that in January 2000 the CIA determined links between Khalid al-Midhar, Nawaf al-Hazmi and al-Qaeda; and that the CIA further identified Khalid as Khalid al-Midhar.
21. Any and all documents reflecting that in February 2000 the intelligence community learned that Osama Bin Laden was making plans to assassinate U.S. intelligence officials, including the Director of the FBI.
22. Any and all documents reflecting that in March 2000 the CIA learned that al-Hazmi had traveled to Los Angeles in January 2000, but did not pass this information on to the FBI until August 2001.
23. *Any and all documents reflecting that in March 2000 the CIA did not disclose to the FBI the existence of the Visa held by al-Midhar nor the surveillance photographs of al-Midhar and al-Hazmi in Malaysia.*
24. Any and all documents reflecting that in March 2000 the intelligence community learned that Osama Bin Laden targets may include the Statute of Liberty, skyscrapers, airports, nuclear plants and West Coast targets.
25. Any and all documents reflecting that on or about December 2000 a joint FBI/CIA source identified Kahallad as a mastermind of the attacks on the U.S.S. Cole and as being involved in attacks on the African embassy bombings.
26. *Any and all documents reflecting that in January 2001 there were at least four separate terrorist identity databases at the State Department, CIA, Department of Defense and the FBI, and that there were dozens of watch lists.*
27. Any and all documents reflecting that in January 2001 a meeting was held between the CIA and the FBI in the New York field office where the FBI was not informed that Kahallad had been identified in the Malaysia photographs with al-Midhar and al-Hazmi, and that al-Midhar and al-Hazmi had then traveled to the U.S.
28. Any and all documents reflecting that in January 2001 the FBI computer system was antiquated and inadequate and could not maintain automated records classified above secret.
29. Any and all documents reflecting that on or about January 04, 2001 a joint FBI/CIA source identified Kahallad as being in the photographs in Malaysia with al-Hazmi and al-Midhar.

30. Any and all documents reflecting that a follow up to a January 5, 2001 CIA report prepared by Doug Miller was never transferred to the FBI.
31. Any and all documents reflecting that on or about January 5, 2001 al-Midhar met with al-Hazmi and others in Kuala Lumpur and photographs were obtained at the request of the U.S. Government.
32. Any and all documents reflecting the January 25, 2001 memorandum Dick Clarke prepared to Condoleezza Rice mentioning sleeper cells.
33. Any and all documents reflecting the February 1, 2001 briefing of Condoleezza Rice by Mr. Pickard, Director Freeh and Steve Hadley.
34. Any and all documents reflecting the February 6, 2001 Senior Executive Intelligence Brief ("SEIB") indicated a heightened threat of Sunni extremist terrorists' attacks, particularly in the Middle East and Europe against U.S. facilities, personnel, and other interests.
35. Any and all documents reflecting the CIA reports disseminated on or about March 2001 that Abu Zubaydah was planning an operation in the near future in a country the CIA thought might be Israel, Saudi Arabia or India and the reports.
36. Any and all documents reflecting the CFG Agenda on or about March 2001 a CFG mentioning "the possibility of alleged Bin Laden interest in targeting U.S. passenger planes at the Chicago Airport".
37. Any and all documents reflecting a March 16, 2001 briefing to Vice President Dick Cheney by Mr. Pickard at the FBI headquarters, and by Director Freeh and Assistant Director Watson.
38. Any and all documents reflecting that in April 2000 the intelligence community learned that Osama Bin Laden had a plot to hijack a Boeing 747, per the FBI Newark office Walk-In Report.
39. Any and all documents reflecting that in April 2001 the intelligence community obtained information regarding operatives in California and New York planning an attack.
40. Any and all documents reflecting an April 20, 2001 SEIB indicating that Osama Bin Laden was planning multiple operations.
41. Any and all documents reflecting that in April 2001 the intelligence community obtained information that Osama Bin Laden was interested in commercial pilots as potential terrorists.

42. Any and all documents reflecting that in May 2001 the Deputy Chief of the Osama Bin Laden Unit at the CIA was detailed to FBI headquarters in the International Terrorism Operations Section ("ITOS"). Identify this person.
43. Any and all documents reflecting that in May 2001 Former Deputy Chief of the Osama Bin Laden Unit at the CIA, detailed to FBI ITOS, began looking in NCI records for photographs taken from the meetings in Kuala Lumpur, obtained three photographs and gave them to Dina Corsi.
44. Any and all documents reflecting that in May 2001 a CIA employee detailed to FBI ITOS asked the CIA's Counter Terrorism Center ("CTC") to assign a CTC desk officer to get up to speed on the early 2000 meetings in Kuala Lumpur, Malaysia, and to determine any potential connections between those meetings and the October 2000 terrorist attack on the U.S.S. Cole.
45. Any and all documents reflecting that in May 2001 the former CIA Deputy Chief of the Osama Bin Laden Unit, became aware that al-Hazmi had traveled to the U.S. in January 2000 and that Kahallad was at the meeting in the photographs at Kuala Lumpur.
46. Any and all documents reflecting that in May 2001 the former CIA Deputy Chief of the Osama Bin Laden Unit detailed to FBI headquarters in ITOS began inquiring of CIA analysts and the analyst assigned to prepare a CTC report on who was responsible for the U.S.S. Cole attacks about the Malaysia meetings.
47. Any and all documents reflecting an email sent on or about May 2001 by the former Deputy Chief of the Osama Bin Laden Unit at the CIA, who was detailed to the FBI headquarters ITOS, to the CIA analyst assigned to write a report on who was responsible for the U.S.S. Cole attack and to the CIA employee assigned to come up to speed with the 2000 meetings in Kuala Lumpur (who was also an FBI detailee) and the CIA CTC agent assigned, noting that he was interested because al-Midhar was traveling with two companions who had left Malaysia and had gone to Bangkok, Los Angeles and Hong Kong. Please also identify each of the recipients.
48. Any and all documents reflecting any communication on or about May 2001 between the former Deputy Chief of the Osama Bin Laden Unit at CIA detailed to FBI ITOS, and Dina Corsi regarding the East Asian travel of some Osama Bin Laden's operatives in January 2000.
49. Any and all documents reflecting that communications on or about May 15, 2001 from the CIA Deputy Chief of the Osama Bin Laden Unit detailed to the FBI

headquarters in the ITOS division, reminding several of his CTC colleagues that after the Malaysia meetings, Khalid al-Midhar had travelled with Nawaf al-Hazmi and other persons, who he believed were couriers, between Malaysia, Bangkok, Los Angeles and Hong Kong.

50. Any and all documents reflecting an email on or about May 15, 2001 from the CIA CTC employee assigned to write a report on the persons responsible for the U.S.S. Cole attack to the former Deputy Chief of the Osama Bin Laden Unit at CIA, detailed to FBI ITOS, indicating, "My head is spinning over this east Asia travel. Do you know if anyone in the CIA's Bin Laden Unit or FBI mapped this?"
51. Any and all documents reflecting a May 23, 2001, SEIB regarding a possible hostage plot against Americans abroad to force the release of Abdel Rahman, otherwise known as the Blind Sheik.
52. Any and all documents reflecting that a May 26, 2001 SEIB indicating that Osama Bin Laden's plans were advancing.
53. Any and all documents reflecting that Khallad, a Saudi and Bojinka Plot member, reported that he intended to hijack a plane and crash it into CIA headquarters in 1995.
54. Any and all documents reflecting the report entitled "Terrorism, Bin Laden Planning Hi Profile Attacks", prepared in June 2001 by the CIA.
55. Any and all documents reflecting that in June 2001, a CIA terrorist threat advisory indicated a high probability of near term "spectacular" terrorists' attacks resulting in numerous casualties.
56. Any and all documents reflecting a June 2001 al-Qaeda intelligence report warning that something very, very, very, very big was about to happen, and that most of Osama Bin Laden's network was reportedly anticipating the attack.
57. Any and all documents reflecting a June 11, 2001 meeting between Dina Corsi and FBI agents to discuss the U.S.S. Cole, which included Steve Bonghardt, an unidentified FBI analyst detailed to the CIA CTC, and an unidentified CIA employee, wherein Dina Corsi displayed Malaysia photographs to the agents, but did not tell the New York agents of the relationship to al-Qaeda.
58. Any and all documents reflecting a CIA report from on or about June 12, 2001 regarding several terrorists and commenting on Khalid Sheikh Mohammed's

recruiting people to travel to the U.S. to meet with colleagues already there to conduct terrorist attacks on behalf of Osama Bin Laden.

59. Any and all documents reflecting a CIA notification to its stations and chiefs around the world from on or about June 22, 2001 regarding intelligence suggesting possible al-Qaeda suicide attacks on U.S. targets, including but not limited to the State Department, and notifying all embassies of the terrorists' threats and updating its' worldwide public warnings.
60. Any and all documents reflecting a June 23, 2001 SEIB warning that Osama Bin Laden attacks may be imminent.
61. Any and all documents reflecting a June 25, 2001 SEIB regarding Osama Bin Laden and associates making near term threats and reporting multiple attacks being planned within the coming days.
62. Any and all documents reflecting a terrorist threat advisory warning from on or about June 25, 2001 warning of imminent "spectacular" terrorist attack.
63. Any and all documents reflecting warnings regarding attacks given on or about June 28, 2001 to senior U.S. government officials, the substance of the warnings and the identification of the officials giving and receiving the warnings.
64. Any and all documents reflecting a June 30, 2001 SEIB indicating that Osama Bin Laden was planning high profile attacks and reporting that the near term attacks were expected to have dramatic consequences.
65. Any and all documents reflecting a July 2, 2001 SEIB indicating that planning for Osama Bin Laden attacks continued, despite delays.
66. Any and all documents reflecting a CIA briefing on or about July 5, 2001 to representatives of INS, FAA, Coast Guard, the Secret Service and U.S. Customs on the current threat at a video conference convened by the Counter Terrorism Security Group.
67. Any and all documents reflecting a meeting on or about July 5, 2001 between Chief of Staff Andy Card, Condoleezza Rice and Dick Clarke regarding domestic agency awareness of the heightened threats and steps to respond.
68. Any and all documents reflecting CIA reports from on or about July 9, 2001 that Osama Bin Laden attacks were imminent.
69. Any and all documents reflecting warnings given on or about July 10, 2001 to senior U.S. government officials regarding attacks.

70. Any and all documents reflecting a memo from on or about July 10, 2001 prepared by Ken Williams, FBI Special Agent, Phoenix Division, reporting that a large number of Muslim fundamentalists were obtaining flight training in the U.S. and any and all documents reflecting that the Radical Fundamentalist Unit of the FBI's Counterterrorism Division was not aware of the memo until after September 11, 2001.
71. Any and all documents reflecting that the CIA was not aware of the "Phoenix Memo" until after September 11, 2001.
72. Any and all documents reflecting a July 13, 2001 SEIB indicating that Osama Bin Laden's plans had been delayed for maybe up to two months, but not abandoned.
73. Any and all documents reflecting a July 25, 2001 SEIB stating that one of Osama Bin Laden's operations was delayed, but plots were ongoing.
74. Any and all documents reflecting a communication from on or about July 13, 2001 from a CIA employee to his agency from the FBI asking for information about the identification of Kahallad and the Malaysia photographs and wanting to know if he could hand that information over to the FBI.
75. Any and all documents reflecting communications from on or about July 13, 2001 from the former Deputy Chief of the Osama Bin Laden Unit at CIA detailed to FBI ITOS, to CTC managers reporting he had discovered a CIA cable stating that a joint CIA/FBI source had, in early January 2001, identified Kahallad in the Kuala Lumpur surveillance photographs, including but not limited to describing Kahallad as a major killer who orchestrated the U.S.S. Cole attack and possibly the Africa bombings and recommended revisiting the Malaysia meetings and asking whether the information could be sent via the CIA to the FBI and was told that an FBI detailee in the CIA's CTC was asked to handle the request for additional information.
76. Any and all documents reflecting that on or about July 23, 2001, former Deputy Chief of the Osama Bin Laden Unit at the CIA, detailed to FBI ITOS, having seen no action to his earlier July 13, 2001 request, e-mailed a CTC manager inquiring on the status of his request to pass information to the FBI.
77. Any and all documents reflecting that in August 2001, the CIA passed information on to the FBI that al-Hazmi and al-Midhar had traveled to Los Angeles in January 2001.

78. Any and all documents reflecting that in August 2001, the intelligence community learned about a plot to bomb the U.S. Embassy in Nairobi from a plane, or to crash a plane into the embassy.
79. Any and all documents reflecting a CIA advisory from on or about August 3, 2001 *concluding that threat of impending al-Qaeda attacks would likely continue indefinitely, citing threats abroad.*
80. Any and all documents regarding the August 6, 2001 Presidential Daily Briefing.
81. Any and all documents reflecting an August 7, 2001 SEIB indicating Osama Bin Laden was determined to strike in the United States.
82. Any and all documents reflecting a CIA briefing from on or about August 6, 2001 to President Bush, stating that "Bin Laden Determined to Strike in the U.S.", naming Khalid Sheikh Mohammed's nephew, identifying the World Trade Center as a target, and also discusses hijacking.
83. Any and all documents reflecting that on or about August 21, 2008, a CIA desk officer noted the connection between Iben Kahattab and Osama Bin Laden; and believed that that it would have been known for years at the CIA, including but not limited to it being known that they shared funding operations and that the FBI informed her that Moussaoui had recruited for Kahattab establishing his connection to Kahattab, and thereby his connection to Osama Bin Laden.
84. Any and all documents reflecting that in August 2001, the FBI learned that al-Hazmi met with Kahallad in Malaysia in 2000, and that al-Midhar had re-entered the U.S. on July 4, 2001.
85. Any and all documents reflecting that on or about August 21, 2001 an FBI agent detailed to the CIA Counter Terrorism Center located a CIA communication regarding al-Hazmi's travel to the U.S. on January 15, 2000 and checked with Customs representatives about al-Hazmi and al-Midhar's travel and discovered that al-Midhar had entered the U.S. on July 4 at JFK Airport in New York, but had not departed and that this agent left a voicemail message for Dina Corsi at FBI headquarters.
86. Any and all documents reflecting that on or about August 21, 2001, an FBI *detailee to Osama Bin Laden Unit and the CTC at the CIA* received a CIA cable dated March 5, 2000 regarding January 2000 travel information about al-Midhar, al-Hazmi and Salah Aseed Mohammed Bin Youssaf.

87. Any and all documents reflecting a meeting on or about August 22, 2001 between a CIA employee, detailed to the FBI, and Dina Corsi at FBI headquarters informing her of the information she learned about al-Hazmi's travel and that al-Hazmi and al-Midhar entered the U.S. on January 15, 2000.
88. Any and all documents reflecting a meeting from on or about August 22, 2001 between a FBI detailee to UBL Unit and the CIA CTC, Dina Corsi and the former Deputy Director to the UBL Unit at the CIA who had been detailed to the FBI, to discuss the discovery that al-Midhar had recently entered the United States and there was no record of his departure.
89. Any and all documents reflecting a meeting from on or about August 22, 2001 between the former Deputy Chief of the Osama Bin Laden Unit at the CIA, detailed to FBI ITOS, Dina Corsi and the FBI detailee in the CIA CTC at FBI headquarters discussing the discovery that al-Midhar had recently entered the U.S. and there was no record of his departure and agreeing it was important to initiate an investigation.
90. Any and all documents reflecting communication from on or about August 22, 2001 from a CIA employee detail to FBI to another CIA officer in the CTC requesting that he draft a notice to the State Department, Immigration, Customs and FBI requesting that al-Midhar and al-Hazmi be placed on watch lists.
91. Any and all documents reflecting the CIA's request from on or about August 23, 2001 that al-Midhar and al-Hazmi be added to the watch list.
92. Any and all documents reflecting that on or about August 23, 2001, the FBI detailee to UBL Unit and the CIA CTC asked a co-worker to place al-Midhar and al-Hazmi on a U.S. watch list.
93. Any and all documents reflecting that on or about August 22, 2001, the CIA provided FBI Agent Samit information connecting Mr. Moussaoui's dead associate to the leader of the Chechen rebels, Ibn Khatab; and any and all documents reflecting that the CIA informed Agent Samit that Ibn Khatab and Osama Bin Laden had a relationship based on their past history.
94. Any and all documents reflecting a briefing from on or about August 23, 2001 provided to the Director of CIA on Zacharias Moussaoui entitled "Islamic Extremist Learns to Fly."
95. Any and all documents reflecting a CIA briefing from on or about August 23, 2001 on Zacharias Moussaoui.

96. Any and all documents reflecting that on or about August 23, 2001, the French Legat, Mr. Abbot, notified Agent Samit that Mr. Moussaoui was connected to a deceased Chechen fighter.
97. Any and all documents reflecting a foreign intelligence service report from on or about August 24, 2001 that Abu Zubaydah was considering mounting terrorist attacks within the United States.
98. Any and all documents reflecting CIA and/or FBI surveillance from on or about August 24, 2001 of al-Midhar and al-Hazmi.
99. Any and all documents reflecting communications from on or about August 24, 2001 between the former Deputy Chief of the Osama Bin Laden Unit at CIA, detailed to FBI ITOS, and Mike Malbie, a supervisory special agent in the radical fundamentalist unit (RFU) in ITOS, regarding Zacharias Moussaoui case about Zacharias Moussaoui, including any and all communications to, from or including David Frasca, Chief of the Radical Fundamentalist Unit (RFU), and Rita Flack, Intelligence Operations Specialist in RFU.
100. Any and all documents reflecting a meeting from on or about August 27, 2001 between Mr. Pickard and CIA Director George Tenet, and any communications or documents reflecting that Mr. Tenet did not mention that he had been briefed in August about Islamic extremists learning to fly, and that Mr. Pickard did not learn about it until after September 11, 2001.
101. Any and all documents reflecting Agent Samit's request from on or about August 28, 2001 to get a FISA search warrant on Zacharias Moussaoui and any response to his request.
102. Any and all documents reflecting a briefing from about August 27, 2001 held by the CIA Deputy Director of Operations on Zacharias Moussaoui.
103. Any and all documents reflecting an August 27, 2001 document entitled "Deputy Director of Operations Update, terrorist threat review, "Islamic extremists learn to fly".
104. Any and all documents reflecting the CIA Executive Director's briefing on August 28, 2001.
105. Any and all documents reflecting the August 28, 2001 Executive Directors Update, Terrorist Threat Review, indicating that an Islamic fundamentalist travelled to U.S. to learn to fly a 747 in Minnesota.

106. Any and all documents reflecting the August 30, 2001, briefing held by the CIA Director.
107. Any and all documents reflecting an update from on or about August 30, 2001, by the Director of Central Intelligence updated to the terrorist threat review "Islamic extremist learns to fly".
108. Any and all documents reflecting a CIA report from on or about August 30, 2001 sent to the FBI outlining the identification of Kahallad at Malaysia meeting.
109. Any and all documents reflecting the September 4, 2001 terrorist threat review to the Executive Director entitled "Executive Director Update".
110. Any and all documents reflecting a September 4, 2001 memorandum from Dick Clarke to Dr. Rice complaining that the military was not doing enough, that the CIA is not pushing hard enough, and not to wait until we're under an attack.
111. Any and all documents reflecting the briefing from the the CIA Deputy Director of Operations from on or about September 10, 2001
112. Any and all documents reflecting the September 10, 2001 terrorist threat review of the Deputy Director of Operations.
113. Any and all documents regarding the November 19, 2001 draft report from the CIA entitled "The 11 September Attacks: A Preliminary Assessment".
114. Any and all documents reflecting CIA cables from on or about January 5, 2001 that discussed al-Midhar's travel and the discovery of the multiple entry U.S. Visa on his Saudi passport.
115. ?Any and all documents reflecting that on or about January 5, 2005 an FBI agent *detailee to the CIA Counter Terrorism Center, Doug Miller, read relevant CIA cables and drafted a central intelligence report.*
116. Any and all documents substantiating and providing the basis for the CIA's OIG 2005 CIA OIG Report on CIA Accountability.
117. ??Any and all documents reflecting that on or about June 1, 2005, no one in the CIA station responsible for monitoring al-Qaeda threats referred the information regarding al-Midhar's Visa to the U.S. to the appropriate CIA personnel authorized to collect foreign intelligence in the United States in conjunction with the FBI.

118. Any and all documents reflecting that in June 2001, the CTC obtained information that key Osama Bin Laden operatives were disappearing .

DOCUMENTS FROM THE FBI

1. Any and all documents reflecting that in January 1996 the intelligence community learned of planned suicide attacks by Sheikh al-Rahman to fly to the U.S. from Afghanistan and attack the White House.
2. Any and all documents reflecting that in October 1996 the intelligence community learned of Iranian plot to hijack a Japanese plane over Israel and crash in Tel Aviv.
3. Any and all documents reflecting that in January 1997 the FBI and CIA learned that a group purchased an unmanned aerial vehicle to use in attacks.
4. Any and all documents reflecting that in July 1998 the intelligence community learned that Osama Bin Laden was considering attacks in the U.S. and that this information was provided to senior government officials.
5. Any and all documents reflecting that on or about August 1998 the intelligence community obtained information that unidentified Arabs planned to fly plane into WTC from a foreign country and that this information was passed on to the FAA and FBI.
6. Any and all documents reflecting that in September 1998 the intelligence community obtained information that Osama Bin Laden operatives might try to fly an explosive-laden plane into a U.S. airport.
7. Any and all documents reflecting that in October 1998 the intelligence community learned that al-Qaeda was trying to set up a cell in the U.S.
8. Any and all documents reflecting that in November 1998 the intelligence community learned that an Osama Bin Laden cell was attempting to recruit a group from U.S. to travel to the Middle East for training to strike domestic targets, that Osama Bin Laden had placed rewards for assassinating four top intelligence agency officers and that Turkish Kaplancilar planned suicide attacks to mark death of Ataturk.
9. Any and all documents reflecting that in January 1999 the intelligence community obtained information that Osama Bin Laden had planned attacks on government facilities in Washington D.C. and New York City.

10. Any and all documents reflecting that in March 1999 the intelligence community learned that an al-Qaeda member (a U.S. Citizen) was to fly a hang glider into the Egyptian Presidential Palace and detonate explosives, but was arrested overseas.
11. Any and all documents reflecting that in August 1999 the intelligence community learned that Osama Bin Laden had targeted the Secretary of State, the Secretary of Defense and the Director of Central Intelligence.
12. *Any and all documents reflecting the January 2000 Osama Bin Laden millennial threat executive briefing summary provided to the FBI Director containing a note on al-Midhar indicating that he had arrived in Kuala Lumpur, but not refer to the Visa information.*
13. Any and all documents reflecting that on or about January 2000 no one in the CIA station responsible for monitoring al-Qaeda threats referred the information regarding al-Midhar's Visa to the U.S. to the appropriate CIA personnel who were authorized to collect foreign intelligence in the United States in conjunction with the FBI.
14. *Any and all documents reflecting that in February 2000 the intelligence community learned that Osama Bin Laden was making plans to assassinate U.S. intelligence officials, including the Director of the FBI.*
15. Any and all documents reflecting that in March 2000 the CIA did not disclose to the FBI the existence of the Visa held by al-Midhar nor did it disclose the surveillance photographs of al-Midhar and al-Hazmi in Malaysia.
16. Any and all documents reflecting that in March 2000 the intelligence community learned that terrorist targets may include the Statute of Liberty, skyscrapers, airports, nuclear plants, and West Coast targets.
17. *Any and all documents reflecting that on or about March 5, 2000 the CIA learned that al-Hazmi had traveled to Los Angeles in January 2000 and that the CIA did not pass this information on to the FBI until August 2001.*
18. Any and all documents reflecting that in April 2000 the intelligence community learned that Osama Bin Laden had a plot to hijack a Boeing 747, per the FBI Newark office Walk-In Report.
19. Any and all documents reflecting that on or about May 31, 2000 al-Midhar and al-Hazmi were rooming in the residence of an FBI asset.

20. Any and all documents reflecting that the threat level was on fire during the summer of 2000.
21. Any and all documents reflecting that in June 2000 al-Midhar left the FBI asset's residence and departed the United States.
22. Any and all documents reflecting that on or about August 23, 2000, Dina Corsi contacted her supervisor, Rob Middleton, regarding al-Midhar's travels to the U.S. and told him that al-Midhar entered the U.S. on July 4, 2001 and there was no record of his departure.
23. Any and all documents reflecting that on or about December 16, 2000, joint FBI/CIA sources identifies Kahallad as a mastermind of the attack upon the U.S.S. Cole and that the FBI/CIA source had previously identified Kahallad as involved in attacks on the embassy bombings
24. Any and all documents reflecting that sometime in late 2000/early 2001 an FBI source provided information linking al-Midhar and al-Hazmi with an alleged mastermind of the U.S.S. Cole attack, including but not limited to Khallad.
25. Any and all documents reflecting a December 2000 classified report regarding the threat to domestic aviation and an NIE report of FAA/FBI joint vulnerability assessment.
26. Any and all documents reflecting that in January 2001, there were at least four separate terrorists identity databases at the State Department, CIA, Department of Defense and the FBI, and that there were dozens of watch lists.
27. Any and all documents reflecting a meeting from on our about January 2001 *between the CIA and the FBI in the New York field office during which the FBI was not informed that Kahallad was identified in the Malaysia photographs with al-Midhar and al-Hazmi or that al-Midhar and al-Hazmi had traveled to the United States.*
28. Any and all documents reflecting that a communication from on or about January 2001 from a former detailee to the Osama Bin Laden Unit and the CTC at the CIA stating that it was easy to lose information at the FBI due to the dependence on paper, that the FBI's computer system was antiquated and inadequate and could not maintain automated records classified above secret, and that the entire system was wholly unusable for terrorism matters.
29. Any and all documents reflecting that from January 2001 through September 2001 the FBI received over 1000 threats.

30. Any and all documents reflecting that on or about January 4, 2001, a joint FBI/CIA source identified Kahallad as being in the photographs from Malaysia with al-Hazmi and al-Midhar.
31. Any and all documents reflecting that a follow up to the January 5, 2001 CIA report prepared by Doug Miller was never transferred to the FBI.
32. Any and all documents reflecting a briefing from on or about February 1, 2001 by Mr. Pickard to Condoleezza Rice along with director Freeh and Steve Hadley.
33. Any and all documents reflecting that in February 2001 the FBI had 42 separate information systems, none of which were connected and that agents lacked access to even basic internet technology.
34. Any and all documents reflecting a February 6, 2001, SEIB indicating heightened threats of Sunni extremist terrorists' attacks, particularly in the Middle East and Europe against U.S. facilities, personnel, and other interests.
35. *Any and all documents reflecting an FBI all office message from on or about April 13, 2001 summarizing the intelligence community's report to date on the Sunni extremists' threat, which did not mention a domestic threat.*
36. Any and all documents reflecting CIA reports disseminated on or about March 2001 that Abu Zubaydah had planned an operation in the near future in a country the CIA thought might be Israel, Saudi Arabia or India.
37. Any and all documents reflecting a briefing from on or about March 16, 2001 of Vice President Dick Cheney by Mr. Pickard at the FBI headquarters, and additional briefing to the Vice President by Director Freeh and Assistant Director Watson.
38. Any and all documents reflecting a April 20 2001 a SEIB indicating that Osama Bin Laden was planning multiple operations.
39. Any and all documents reflecting that in April 2001 the intelligence community obtained information that Osama Bin Laden was interested in commercial pilots as potential terrorists.
40. Any and all documents reflecting communications from on or about May 2001 by a CIA employee detailed to FBI ITOS asked CIA's CTC requesting that CTC assign a CTC desk officer to get up to speed on the early 2000 meetings in Kuala Lumpur, Malaysia, and to determine any potential connections between those

meetings and the October 2000 terrorist attack on the U.S.S. Cole. This assignment was given to an employee who was an FBI detailee in the CIA CTC.

41. Any and all documents reflecting that in May 2001 an unidentified CIA Deputy Chief of the Osama Bin Laden Unit, detailed to the FBI ITOS, became interested in the Malaysia photographs and the relationship to the bombing of the U.S.S. Cole, and became aware that al-Hazmi had traveled to the U.S. in January 2000 and that Kahallad was at the meeting in the photographs at Kuala Lumpur.
42. Any and all documents reflecting that in May 2001 the CIA former Deputy Chief of the Osama Bin Laden Unit detailed to FBI headquarters in ITOS began inquiring about the Malaysia meetings with CIA analysts and the CTC analyst that had been involved in the U.S.S. Cole investigation and was assigned to prepare a CTC report on who was responsible for the U.S.S. Cole attacks.
43. Any and all documents reflecting communications from May 2001 from the former Deputy Chief of the Osama Bin Laden Unit at the CIA, who was detailed to the FBI headquarters ITOS, to the CIA analyst and the CTC analyst assigned to write a brief on who was responsible to the U.S.S. Cole attack and to the CIA employee assigned to come up to speed with the 2000 meetings in Kuala Lumpur (who was also an FBI detailee) noting that he was interested because al-Midhar was traveling with two companions who had left Malaysia and had gone to Bangkok, Los Angeles and Hong Kong. Please also identify all employees receiving these communications.
44. Any and all documents reflecting communications from May 2001 between the former Deputy Chief of the Osama Bin Laden Unit at CIA detailed to FBI ITOS, and Dina Corsi regarding the East Asian travel of some Osama Bin Laden operatives in January 2000.
45. Any and all documents reflecting that in May 2001 the intelligence community obtained a report that Osama Bin Laden supporters were to use explosives in an operation within the U.S. and that the information was shared with FBI, INS, Customs and State Department in July and August.
46. Any and all documents reflecting that in May 2001 FBI analyst Dina Corsi, FBI learned of the January 2000 Malaysia meeting photographs but did not learn that Kahallad was in the photographs, nor that al-Midhar had a multiple entry Visa, nor of al-Hazmi's travel to the U.S. in January 2000.
47. Any and all documents reflecting a meeting from on or about May 2001 between Dina Corsi and FBI agents to discuss the U.S.S. Cole investigation, which included

Steven Bonghardt, an unidentified FBI agent detailed to the CIA CTC and a CIA employee; any and all documents reflecting that no one told Dina Corsi that Kahallad was in the photographs, that al-Midhar had a multiple entry Visa or that al-Hazmi's traveled to the U.S. in January 2000. Please identify all persons at this meeting.

48. Any and all documents reflecting that in May 2001 the former Deputy Chief of the Osama Bin Laden Unit at CIA, detailed to FBI ITOS, began looking in NCI records for photos taken from the meetings in Kuala Lumpur, obtained three photographs and gave Dina Corsi three photographs but did discuss with Dina Corsi that Kahallad had been identified in the photographs.
49. Any and all documents reflecting Attorney General Ashcroft's May 10, 2001 budget guidance for the FBI.
50. Any and all documents reflecting communications from on or about May 15, 2001 from the CIA Deputy Chief of the UBL Unit detailed to the FBI headquarters in the ITOS division, reminding several of his CTC colleagues that after the Malaysia meetings, Khalid al-Midhar had travelled with Nawaf al-Hazmi and other persons who he believed were couriers that had traveled between Malaysia, Bangkok, Los Angeles and Hong Kong.
51. Any and all documents reflecting communications from on or about May 15, 2001 from the CIA CTC employee, assigned to write a report on the person responsible for the U.S.S. Cole attack, to the former Deputy Chief of the Osama Bin Laden Unit at CIA, detailed to FBI ITOS, indicating, "My head is spinning over this east Asia travel. Do you know if anyone in the CIA's Bin Laden Unit or FBI mapped this?"
52. Any and all documents reflecting a May 23, 2001 SEIB regarding a possible hostage plot against Americans abroad to force the release of Abdel Rahman, otherwise known as the Blind Sheik.
53. Any and all documents reflecting a May 26, 2001 SEIB indicating that Osama Bin Laden's network plans were advancing.
54. Any and all documents reflecting an intelligence report from on or about June 2001 regarding al-Qaeda warning that something very, very, very, very big was about to happen, and that most of Osama Bin Laden's network was reportedly anticipating the attack.
55. Any and all documents reflecting a meeting from on or about June 11, 2001 between Dina Corsi and FBI agents to discuss the U.S.S. Cole, which included

Steve Bonghardt, an unidentified FBI analyst detailed to the CIA CTC, and a third unidentified CIA employee, and that Dina Corsi displayed Malaysia photographs to the agents, but did not tell the New York agents of the relationship to al-Qaeda. Please identify all persons present at the meeting.

56. Any and all documents reflecting a SEIB report warning that Osama Bin Laden attacks may be imminent.
57. *Any and all documents reflecting a June 25, 2001 SEIB indicating that Osama Bin Laden and associates were making near term threats and reportimh multiple attacks being planned within the coming days.*
58. Any and all documents reflecting a terrorist threat advisory from June 5, 2001 warning of an imminent "spectacular" terrorist attack.
59. Any and all documents regarding a June 28, 2001 meeting between Mr. Pickard, the Attorney General, the Deputy Attorney General and the Chief of Staff and Assistant Director Garcia from the FBI.
60. Any and all documents regarding a June 28, 2001 warning given to senior U.S. government regarding the attacks.
61. Any and all documents reflecting a June 30, 2001 SEIB that Osama Bin Laden was planning high profile attacks, reporting that near term attacks were expected to have dramatic consequences.
62. Any and all documents reflecting that in July 2001 the FBI warned of potential *terror attacks from Muslims and Osama Bin Laden.*
63. Any and all documents reflecting that on or about July 2, 2001 an FBI advisory reported increased threats.
64. Any and all documents reflecting an FBI national law enforcement telecom known as NLETs from on or about July 2, 2001 concerning anti-United States terrorists' attacks, which included a statement that the FBI had no information indicating a credible threat of terrorist attack in the U.S.
65. Any and all documents regarding a July 2, 2001 SEIB indicating that planning for Osama Bin Laden attacks continued, despite delays.
66. Any and all documents regarding a July 9, 2001 intelligence community briefing provided to senior government officials that Osama Bin Laden attacks were expected imminently.

67. Any and all documents reflecting warnings from on or about July 10, 2001 given to senior U.S. government officials regarding attacks. Please identify those giving the warning and the U.S. Government officials who received the warnings.
68. Any and all documents regarding a July 13, 2001 SEIB indicating that Osama Bin Laden's plans had been delayed for maybe up to two months, but were not abandoned.
69. Any and all documents regarding a July 25, 2001 SEIB stating that one of Osama Bin Laden's operations was delayed, but plots were ongoing.
70. Any and all documents regarding memorandum from on or about July 10, 2001 prepared by Ken Williams, FBI Special Agent, Phoenix Division, reporting that a large number of Muslim fundamentalists were obtaining flight training in the U.S. and that the Radical Fundamentalist Unit of the FBI's CTC was not aware of the reports.
71. Any and all documents reflecting that the CIA was not aware of the Phoenix memorandum until after September 11, 2001.
72. Any and all documents reflecting that in June 2001, the CTC obtained information that key Osama Bin Laden operatives were disappearing .
73. Any and all documents regarding communications from on or about July 13, 2001 from a CIA employee communication back to his agency from the FBI asking for information about the identification of Kahallad and the Malaysia photographs and wanted to know if he could hand that information over to the FBI.
74. Any and all documents regarding communications from on or about July 13, 2001 from the former Deputy Chief of the Osama Bin Laden Unit at CIA, detailed to FBI ITOS, to CTC managers reporting he had discovered a CIA cable stating that a joint CIA/FBI source had, in early January 2001, identified Kahallad in the Kuala Lumpur surveillance photographs, including but not limited to him describing Kahallad as a major killer who orchestrated the U.S.S. Cole attack and possibly the Africa bombings and recommending revisiting the Malaysia meetings and asking whether the information could be sent via the CIA to the FBI and was told that an FBI detailee in the CIA's CTC was asked to handle the request for additional information.
75. Any and all documents reflecting communications from on or about July 23, 2001 from the former Deputy Chief of the Osama Bin Laden Unit at CIA, detailed to FBI ITOS, having received no response to his request to revisit the Malaysia meetings and whether the information could be sent to via the CIA to the FBI and

again communicating with the CIA inquiring about the status of his request to pass information on to the FBI.

76. Any and all documents regarding a July 13, 2001 SEIB indicating that Osama Bin Laden plans had been delayed for maybe up to two months, but not abandoned.
77. Any and all documents reflecting that on or about July 19, 2001, Mr. Pickard had a conference call with all 56 SACs and all the assistant directors and that the issue of threat level was discussed.
78. Any and all documents regarding a July 19, 2001 conference call wherein the Acting Director of the FBI mentioned the need to have the evidence response teams ready to move at a moment's notice, but did not task FBI field offices to determine whether any plots were being considered within the U.S.
79. *Any and all documents reflecting that in August 2001 the FBI advisory increased the volume of threat, reporting an upcoming anniversary of the East Africa Embassy bombings, and directing that increased attention should be paid to security planning; also mentioning the possibility that attacks in the U.S. could not be discounted.*
80. Any and all documents reflecting that in August 2001 Mr. Mamarang told Agent Samit not to arrest Moussaoui and indicated that they would get a surveillance team from Chicago and New York to follow him around.
81. Any and all documents reflecting that in August 2001 Dina Corsi sought *permission from NSA to pass al-Midhar intelligence to the New York field office.*
82. Any and all documents reflecting that in August 2001 an FBI Agent tasked to find al-Midhar and al-Hazmi was told not to check credit card information from Saudi Airlines and did not share critical information. Identify the FBI Agent and provide a summary of his experience as of August 2001.
83. Any and all documents reflecting that in August 2001 the CIA passed information on to the FBI that al-Hazmi and al-Midhar had traveled to Los Angeles in January 2001.
84. Any and all documents reflecting that in August 2001 the intelligence community learned about a plot to bomb the U.S. Embassy in Nairobi from a plane, or to crash a plane into the Embassy.

85. Any and all documents reflecting a CIA advisory issued on or about August 3, 2001 concluding that a threat of impending al-Qaeda attacks would likely continue indefinitely, citing threats abroad.
86. Any and all documents regarding an August 6, 2001 Presidential Daily Briefing.
87. Any and all documents reflecting an August 7, 2001, SEIB indicating that Osama Bin Laden was determined to strike in the U.S.
88. Any and all documents reflecting an August 18, 2001 communication prepared by Special Agent Samit, to CTC marked immediate and indicating he thought Moussaoui was planning a terrorist attack, including but not limited to his request for permission for the DOJ Office of Intelligence Policy Review to contact the U.S. Attorney's Office in the District of Minnesota regarding Moussaoui and any response to his request.
89. Any and all documents reflecting an EC from on or about August 21, 2001 from Special Agent Samit to Mike Malbie, SEIB Supervisory Special Agent at the FBI, requesting that the U.S. Secret Service be notified of the threat potential indicated by Moussaoui "if he seizes an aircraft flying from Israel to New York City, it will have the fuel on board to reach D.C." and any response to Agent Samit's request.
90. *Any and all documents reflecting that on or about August 21, 2001 Special Agent Samit spoke with Unit Chief Frasca about getting a criminal search warrant against Moussaoui and that Frasca said no and suggested going for a FISA warrant.*
91. Any and all documents reflecting that on or about August 21, 2008 the CIA was familiar with the connection between Iben Kahattab and Osama Bin Laden; and that it would have been known for years at the CIA, and that the FBI informed the CIA that Moussaoui had recruited for Kahattab establishing his connection to Kahattab, and thereby his connection to Osama Bin Laden.
92. Any and all documents reflecting that in August 2001 the FBI learned that al-Hazmi met with Kahallad in Malaysia in 2000, and that al-Midhar had re-entered the U.S. on July 4, 2001.
93. Any and all documents reflecting that on or about August 21, 2001 the FBI agent detailed to the CIA CTC located a CIA communication regarding al-Hazmi's travel to the U.S. on January 15, 2000 and checked with Customs representatives about al-Hazmi and al-Midhar's travel and discovered al-Midhar had entered the U.S. on July 4, 2001 at JFK Airport in New York, but had not departed and that he left a voicemail message for Dina Corsi at FBI headquarters.

94. Any and all documents reflecting that on or about August 21, 2001 an FBI detailee to the Osama Bin Laden Unit and the CTC received a cable dated March 5, 2000 regarding the January 2000 travel information of al-Midhar, al-Hazmi and Salah Saeed Mohammed Bin Youssaf, and that the cable described travel to Bangkok, Thailand and subsequent travel to the United States; and any and all documents reflecting that the FBI detailee to the CIA CTC relayed information to Dina Corsi in a message that she had something important to discuss with her.
95. Any and all documents reflecting a meeting from on or about August 22, 2001 between a CIA employee who was detailed to the FBI and Dina Corsi at FBI headquarters and informed her of the information she learned about al-Hazmi's travel and that al-Hazmi and al-Midhar entered the U.S. on January 15, 2000. Please identify the CIA employee detailed to the FBI at this meeting.
96. Any and all documents reflecting a meeting from on or about August 22, 2001 between the FBI detailee to Osama Bin Laden Unit and the CIA CTC, Dina Corsi and the Former Deputy Director to the Osama Bin Laden Unit at the CIA who had been detailed to the FBI, to discuss the discovery that al-Midhar had recently entered the United States and there was no record of his departure. Please identify all attendees at this meeting.
97. Any and all documents reflecting a meeting from on or about August 22, 2001 between an FBI detailee to CIA CTC and Dina Corsi concerning al-Midhar and al-Hazmi and that it was imperative to find them.
98. Any and all documents reflecting a meeting from on or about August 22, 2001 between the former Deputy Chief of the Osama Bin Laden Unit at the CIA, detailed to FBI ITOS, Dina Corsi and the FBI detailee in the CIA CTC, at FBI headquarters discussing the discovery that al-Midhar had recently entered the U.S. and there was no record of his departure and that it was important to initiate an investigation.
99. Any and all documents reflecting a request from on or about August 22, 2001 by a CIA employee detailed to FBI to another CIA officer in the CTC to draft a notice to the State Department, Immigration, Customs and FBI requesting that al-Midhar and al-Hazmi be placed on watch lists.
100. Any and all documents reflecting that on or about August 23, 2001 the FBI detailee to Osama Bin Laden Unit and the CIA CTC asked a co-worker to place al-Midhar and al-Hazmi on a U.S. watch list.

101. Any and all documents reflecting that on or about August 22, 2001, the CIA provided Agent Samit of the FBI information connecting Moussaoui's dead associate to the leader of the Chechen rebels, Ibn Khatab, and that the CIA also informed Agent Samit that Ibn Khatab and Osama Bin Laden had a relationship based on their past history.
102. Any and all documents reflecting that on or about August 23, 2001, French Legat, Mr. Abbot, notified Agent Samit that Moussaoui was connected to a deceased Chechen fighter.
103. Any and all documents regarding an August 24, 2001, foreign intelligence service report that *Abu Zubaydah was considering mounting terrorist attacks within the United States.*
104. Any and all documents reflecting that on or about August 24, 2001, the CIA and/or FBI watched al-Midhar and al-Hazmi.
105. Any and all documents reflecting an August 24, 2001 communication from Agent Samit to his acting supervisor, John Connelly, who is a detailee from Immigration to the Osama Bin Laden Unit at FBI headquarters giving him notice that there were some possible connections to Osama Bin Laden from Moussaoui and any response from the Osama Bin Laden unit.
106. Any and all documents reflecting a meeting on or about August 27, 2001 between Rita Flack, Mike Sobel and Mile Malbie regarding the Moussaoui FISA request.
107. Any and all documents reflecting that on or about August 27, 2001 Dina Corsi requested permission through the NSA representative at the FBI to pass on to FBI agents in New York information about the U.S.S. Cole investigation that would assist them in associating al-Midhar with the terrorist facility in the Middle East that is linked to al-Qaeda activities.
108. Any and all documents reflecting that on or about August 28, 2001 Agent Samit's request to get a FISA search warrant on Moussaoui was denied by headquarters.
109. Any and all documents reflecting that on or about August 27, 2001 Mr. Pickard met with CIA Director George Tenet, and that Mr. Tenet did not mention he had been briefed in August about Islamic extremists learning to fly, and that Mr. Pickard did not learn about it until after September 11, 2001.
110. Any and all documents reflecting that on or about August 28, 2001, Dina Corsi asked Bonghardt to delete a communication from his computer because it contained NSA information.

111. Any and all documents reflecting that on or about August 28, 2001, Dina Corsi sent the New York field office an electronic communication requesting a full field investigation to locate al-Midhar and the communication was marked as routine, which has the lowest level of precedence.
112. Any and all documents reflecting communication from on or about August 28, 2001 by Steve Bonghardt that the al-Midhar investigation should be opened as a criminal case rather than an intelligence case.
113. Any and all documents reflecting an EC from on or about August 28, 2001 from the Counter Terrorism Division of FBI headquarters to New York was sent asking the New York field office to look for two Bin Laden operatives, Khalid al-Midhar and al-Hazmi, in the U.S.
114. *Any and all documents reflecting the response on or about August 28, 2001 from Paris Legat to an FBI request to look for Mr. Moussaoui in the White Pages.*
115. Any and all documents reflecting an August 29, 2001 communication from Dina Corsi to Bonghardt telling him that the National Security Law Unit decided that no criminal agents should attend any interview of al-Midhar, if he is located.
116. Any and all documents reflecting that on or about August 29, 2001 the FBI opened an investigation to locate al-Midhar, and assigned Robert Fuller to the task. Describe Mr. Fuller's experience as of August 29, 2001.
117. Any and all documents reflecting an August 29, 2001 communication from Steve Bonghardt to Dina Corsi regarding the wall, "Someday someone will die, and wall or not, the public will not understand why we were not more effective in throwing every resource we had at certain 'problems'".
118. Any and all documents reflecting that on or about August 30, 2001, French Legat provided information to Agent Samit that Mr. Moussaoui had extreme views, espoused violence, attempted to recruit and convert others to the extreme view of Islam and to violence, and that he followed closely the Whabi sect of Islam.
119. Any and all documents reflecting an August 30, 2001 Central Intelligence report sent to the FBI outlining the identification of Kahallad at the Malaysia meeting.
120. *Any and all documents reflecting an August 31, 2001 FBI letterhead memorandum prepared by Agent Samit from the Minneapolis office to the FAA advising them of a threat to security of aircraft, and the status of the letterhead memorandum.*

121. Any and all documents reflecting that on or about September 1, 2001 the FBI started searching for al-Midhar and al-Hazmi.
122. Any and all documents reflecting that on or about September 4, 2001 Agent Fuller started to locate al-Midhar.
123. Any and all documents reflecting a September 5, 2001 FBI issued teletype to the FAA notifying them of the suspect in custody that they believed to be involved in a plan to hijack a commercial airline.
124. Any and all documents reflecting that on or about September 5, 2001, the investigation into al-Midhar and al-Hazmi included NCIC criminal checks, credit checks, MVD checks and the security department of the Marriott Hotel chain and checkpoint searches.
125. Any and all documents reflecting that on or about September 5, 2001, in his investigation about al-Midhar, Agent Fuller asked Dina Corsi regarding checking with Saudi Arabian airlines for credit card information and Dina Corsi advised him not to do it.
126. Any and all documents reflecting that on or about September 5, 2001, Agent Samit met at the FAA office in Minneapolis with the FBI and advised them of his fears about Moussaoui.
127. Any and all documents reflecting a September 10, 2001, electronic communication from the New York FBI office to the Los Angeles office requesting that the Los Angeles office check registration records for Khalid al-Midhar and al-Hazmi at all the Sheratons in the Los Angeles area between January 15, 2000 and June 10, 2000 and also asked for airline checks.
128. Any and all documents reflecting a September 11, 2001 request prepared by Agent Fuller to the FBI office in Los Angeles requesting a check into Sheraton Hotel records concerning al-Midhar and al-Hazmi.
129. Any and all documents reflecting that on or about September 12, 2001 the Attorney General denied Mr. Pickard's request for increases in the budget.
130. Any and all documents reflecting that on or about January 5, 2005 the FBI agent detailed to the CIA CTC, Doug Miller, read relevant CIA cables and drafted a central intelligence report.
131. Any and all documents reflecting that the FBI issued at least 3 nationwide warnings to federal and state law enforcement agencies and tasked all 56 of its'

U.S. field offices to increase surveillance of known suspected terrorists before September 11, 2001.

132. Any and all documents reflecting that the FBI was not informed that Kahallad had been identified in the Malaysia photographs before September 11, 2001.
133. Any and all documents reflecting John Lagouri, supervisor of the New York field office, discussing a potential al-Midhar interview as an intelligence investigation, and not a criminal investigation.
134. Any and all documents reflecting e-mail exchange(s) regarding the National Security Law Unit opinion on al-Midhar being opened as an intelligence investigation and not as a criminal investigation.

DOCUMENTS FROM THE WHITE HOUSE

1. Any and all documents reflecting the March 16, 2001, briefing of the Vice President on the presence of Al-Qaeda in the United States.
2. Any and all documents regarding a December 1, 1998 assessment that Osama Bin Laden was planning attacks against U.S. targets.
3. Any and all documents reflecting the CIA's preparation of, and the President signing, a document stating that Osama Bin Laden's January 1998 statement was a "de facto declaration of war".
4. Any and all documents reflecting a March 16, 2001 briefing to Vice President Dick Cheney by Mr. Pickard at the FBI headquarters, and by Director Freeh and Assistant Director Watson.
5. Any and all documents regarding an August 6, 2001 Presidential Daily Briefing.
6. ??Any and all documents regarding the SEIB and the President's Daily Briefing, which were both prepared daily, including, but not limited to the SEIBs in 18 of 298 articles in SEIBs in June 2001 .

DOCUMENTS FROM THE UNITED STATES DEPARTMENT OF STATE

1. Any and all documents reflecting that in May 2001 the intelligence community obtained a report that Osama Bin Laden supporters were to use explosives in operation within the U.S. and the information was shared with FBI, INS, Customs and the State Department in July and August.
2. Any and all documents reflecting that on or about August 22, 2001 a CIA employee detailed to the FBI asked another CIA officer in the CTC to draft a

notice to the State Department, Immigration, Customs and FBI requesting that al-Midhar and al-Hazmi be placed on watch lists.

3. Any and all documents reflecting a June 2001 warning sent by the State Department regarding increased risk of terrorist action to Americans travelling abroad
4. Any and all documents reflecting that on or about June 26, 2001, the State Department told a Taliban representative in Pakistan that the Taliban would be held responsible for terrorist attacks by Osama Bin Laden or al-Qaeda .
5. Any and all documents reflecting that the State Department issued at least 4 urgent security advisories and public worldwide cautions on terrorist threats, enhanced security measures at certain embassies, and warned the Taliban that they would be held responsible for any Al-Qaeda attacks on U.S. prior to September 11, 2001.
6. Any and all documents reflecting that in January 2001 there were at least four separate terrorist identity databases at the State Department, the CIA, the Department of Defense and the FBI, and there were dozens of watch lists.

DOCUMENTS FROM THE UNITED STATES COASTGUARD

1. Any and all documents reflecting that on or about July 5, 2001 Dick Clarke convened a meeting of CSG as well as representatives from FAA, INS and Customs and Coastguard, and that the agencies were asked to take additional measures to increase security and surveillance.

DOCUMENTS FROM U.S. PERMANENT SELECT COMMITTEE

1. Any and all documents regarding the December 20, 2002 "Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001", including 500,000 pages of documents from the intelligence community and 300 interviews.
2. Any and all documents regarding a February 1, 2002 U.S. House Permanent Select Committee on Intelligence Joint Inquiry on the September 11, 2001.

DOCUMENTS FROM U.S. CENTRAL COMMAND

1. Any and all documents reflecting that on or about June 21, 2001, the U.S. Central Command raised the force protection condition level for the United States troops in various countries to the highest possible level – Delta, and that exercises in

Jordan were halted, the fifth fleet was moved out of Bahrain and the Embassy in Yemen was closed.

DOCUMENTS FROM THE NATIONAL SECURITY AGENCY ("NSA")

1. Any and all documents reflecting that in January 1999 the National Security Agency "NSA" obtained information that person's named Khalid and Nawaf were planning to travel to Malaysia.
2. Any and all documents reflecting 33 separate warnings of terror attacks between May and July 2001 were issued by the NSA.
3. Any and all documents reflecting that on or about August 27, 2001, Dina Corsi requested permission through the NSA representative at the FBI to pass on to the FBI agents in New York information about the U.S.S. Cole investigation that would assist them in associating al-Midhar with the terrorist facility in the Middle East that is linked to al-Qaeda activities and any NSA response.
4. Any and all documents reflecting that on or about August 28, 2001, Dina Corsi asked Bonghardt to delete the communication from his computer because it contained NSA information.
5. Any and all documents reflecting that on or about September 10, 2001, the NSA intercepted two communications suggesting imminent terrorist activity, which were translated into English and disseminated on September 12, 2001.

DOCUMENTS FROM THE UNITED STATES DEPARTMENT OF JUSTICE ("DOJ")

1. Any and all documents regarding a March 7, 2001 meeting between Attorney General Ashcroft and National Security advisor Condoleezza Rice, including, but not limited to, documents relevant to Ashcroft's recommendation at the meeting that covert action authorities be clarified and expanded to allow for decisive lethal action.
2. Any and all documents reflecting Attorney General Ashcroft's May 10, 2001 budget guidance for the FBI.
3. Any and all documents regarding a June 28, 2001 meeting between Mr. Pickard, the Attorney General, the Deputy Attorney General, the Chief of Staff and Assistant Director Garcia from the FBI.
4. Any and all documents reflecting that on or about July 5, 2001 the CIA briefed Attorney General Ashcroft on al-Qaeda threats, warning a significant attack was imminent.

5. Any and all documents reflecting an August 18, 2001 communication prepared by Special Agent Samit to CTC marked immediate and indicating he thought Moussaoui was planning a terrorist attack, including but not limited to his request for permission for the DOJ Office of Intelligence Policy Review to contact the U.S. Attorney's Office in the District of Minnesota regarding Moussaoui.
6. Any and all documents reflecting that on or about November 19, 2001, the DOJ reduced terrorism agents and funding.

DOCUMENTS FROM THE DEPARTMENT OF DEFENSE ("DOD")

1. Any and all documents reflecting that in January 2001 there were at least four separate terrorist identity databases at the State Department, CIA, Department of Defense and the FBI, and that there were dozens of watch lists.
2. Any and all documents reflecting that in May 2001 the DOD told the intelligence community that seven UBL associates departed locations for Canada, U.S. and UK .
3. Any and all documents reflecting that on or about June 22, 2001 to June 26, 2001, July 6, 2001 and July 20, 2001, the DOD issued terrorism warning reports or extensions to alert U.S. military forces to signs of a near term attack .
4. Any and all documents regarding the DOD issuing at least 5 urgent warnings to U.S. Military forces that al-Qaeda might be planning a near term attack.

DOCUMENTS FROM THE FEDERAL AVIATION AGENCY ("FAA")

1. Any and all documents reflecting that in January 1995 the National Intelligence Estimate (NIE) on terrorism mentioned a plot to blow up 12 U.S. airliners.
2. Any and all documents reflecting that in January 1995 a Philippine National Police raid in Manila suggested that Ramzi Yousef, Abdul Murand and Khalid Sheik Mohammed planned to crash a plane into CIA headquarters and that this information was passed on to the FAA .
3. Any and all documents regarding a January 9, 1995 FAA Security Directive 95-01 regarding the Bojinka plot.
4. Any and all documents regarding a January 15, 1995 follow up security directive from FAA regarding the Bojinka plot.
5. Any and all documents regarding a February 9, 1995 security directive follow up from the FAA on the Bojinka plot.

6. Any and all documents regarding a January 1997 update to NIE for threats to aviation.
7. Any and all documents regarding an October 1997 FAA District Security Directive requiring air carriers to employ an automated passenger pre-screening system known as the Computer-Assisted Passenger Pre-Screening System, or CAAPS, which automatically scored each passenger's security risk based on a computer arraying of various factors.
8. Any and all documents reflecting that in August 1998 the intelligence community obtained information that unidentified Arabs planned to fly a plane into the World Trade Center from a foreign country and this information was passed to the FAA and the FBI.
9. Any and all documents regarding an August 28, 1998 FAA Security Directive regarding a possible terrorist threat in the Philippines.
10. Any and all documents regarding a September 1999 Intelligence Note on Osama Bin Laden and the World Islamic Front Hijacking Threat.
11. Any and all documents regarding a February 2000 Assessment "Prospects for Another Sustained Hijacking to Free Incarcerated Terrorists."
12. Any and all documents regarding a December 2000 report regarding threats to domestic aviation.
13. The NIE report of FAA/FBI joint vulnerability assessment.
14. Any and all documents regarding a June 22, 2001 FAA Circular referring to a possible hijacking plot to release incarcerated persons.
15. Any and all documents reflecting that on or about July 5, 2001 the CIA briefed representatives of INS, FAA, the Coast Guard, Secret Service and Customs on the current threat at a video conference convened by the Counter Terrorism Security Group.
16. Any and all documents reflecting that in August 2001 the FAA's No Fly Lists contained less than a dozen people.
17. Any and all documents reflecting that in September 2001 there were 35 to 36 air marshals.
18. Any and all documents reflecting that in September 2001 the FBI issued a teletype to the FAA notifying them of a suspect in custody that they believed to be involved in a plan to hijack a commercial airline.

19. Any and all documents reflecting a meeting from on or about September 5, 2001 between FBI Agent Samit and the FAA at the FAA office in Minneapolis where Agent Samit and advised the FAA of his fears about Mr. Moussaoui.
20. Any and all documents reflecting that the FAA issued at least 5 civil aviation security information circulars to all U.S. airlines and airport security personnel, including specific warnings about the possibility of hijacking before September 11, 2001.
21. Any and all documents reflecting that Quatani was turned away at the Orlando airport and Mohammed Atta waiting for him.
22. Any and all documents reflecting that on or about July 5, 2001, Dick Clarke convened a meeting of CSG as well as representatives from FAA, INS and Customs and Coastguard and agencies were asked to take additional measures to increase security and surveillance.

DOCUMENTS FROM UNITED STATES CUSTOMS

1. Any and all documents reflecting communications from on or about August 21, 2001 from an FBI detailee to the Osama Bin Laden Unit with U.S. Customs representatives about al-Midhar and al-Hazmi.
2. Any and all documents reflecting that on or about July 5, 2001 the CIA briefed representatives of INS, FAA, Coast Guard, Secret Service and Customs on the current threat at a video conference convened by the Counter Terrorism Security Group.
3. Any and all documents reflecting that on or about August 21, 2001, an FBI agent detailed to the CIA Counter Terrorism Center located the CIA communication regarding al-Hazmi's travel to the U.S. on January 15, 2000 and she checked with Customs representatives about al-Hazmi and al-Midhar's travel and discovered al-Midhar had entered the U.S. on July 4 at JFK Airport in New York, but has not departed.
4. Any and all documents reflecting that in May 2001, the intelligence community *obtained a report that Osama Bin Laden supporters were to use explosives in an operation within the U.S. and that the information was shared with the FBI, INS, Customs and the State Department in July and August .*
5. Any and all documents reflecting that on or about August 22, 2001 the CIA employee detailed to FBI asked another CIA officer in the Terrorism Center to draft a notice to the Department of State, Immigration, Customs and FBI requesting that al-Midhar and al-Hazmi be placed on watch lists.